No. 03-21-00053-CV

In the Court of Appeals for the Third District of Texas at Austin

Mary Louise Serafine, *Appellant*

v.

Karin Crump, in her individual capacity, and Lora J. Livingston, in her official capacity, as Presiding Judges of the 200th Civil District Court of Travis County, Texas; Melissa Goodwin, in her individual and official capacities as Justice of the Third Court of Appeals at Austin, Texas; David Puryear and Bob Pemberton, in their personal and individual capacities, including as former justices of the Third Court of Appeals at Austin, Texas; and Thomas Baker and Gisela Triana, in their official capacities as Justices of the Third Court of Appeals at Austin,

Appellees

From the 345th Judicial District Court of Travis County, Texas,
Hon. Todd A. Blomerth, presiding,
Cause No. D-1-GN-19-002601

APPELLANT'S FIRST AMENDED BRIEF INCLUDING SUPPLEMENTAL PAGES [1]

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ORAL ARGUMENT REQUESTED

[1] For the convenience of the Court and parties, nine supplemental pages, with the Court's leave, are added, beginning at page 65; there are minor edits with no changes in substance, organization, or case law.

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[2] The caption of this case includes Judge Livingston and Justices Baker and Triana, accurately reflecting the operation of automatic successor substitution rules in the case since 2019—Fed. R. Civ. P. 25(d) and Fed. R. App. P. 43(a), and the operation in this appeal of Tex. R. App. P. 7.2. *See* Tabs 4, 5, 6.

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STATEMENT OF THE CASE[3]

Nature of the case: The case is a civil rights law suit for denial of due process against four state-court judges and justices (Defendant-Jurists), three of whom have been replaced by operation of law in official capacity by their successors. Tabs 1, 2 (Petition); 4, 5, and 6 (rules). In their defense against the action, Defendants in the state trial court filed motions to declare Plaintiff vexatious. The instant proceeding is the interlocutory appeal of the trial court's declaration of Plaintiff as a "vexatious litigant," issuance of a prefiling order, and requirement of security. Tabs 15, 16.

Course of Proceedings: The case was originally filed in federal court in December, 2017. In May, 2019, after dismissed without prejudice for lack of subject matter jurisdiction, Plaintiff re-filed in state court under the Texas savings clause.

In June, 2019, Defendants removed the case back to federal court.
In late November, 2019, the federal court remanded back to state court.

In December, 2019, Defendants filed motions against Plaintiff to have her declared a "vexatious litigant."
No hearing was held for a year.
In December, 2020 the trial court held a hearing.

Disposition below: In January, 2021, the trial court declared Plaintiff a vexatious litigant. Plaintiff did not pay the security, but the trial court did not dismiss the case.

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[3] The Texas Supreme Court denied Appellant's requests under Government Code Chapter 73 to transfer this case to a neutral court of appeals. While the issue is not pursued again here, Appellant maintains the objection.

STATEMENT ON ORAL ARGUMENT

The vexatious litigant statute at Chapter 11, Civil Practice & Remedies Code, is widely thought by all three branches of state government to be an important tool for controlling the harms cause by *pro se* litigants who file multiple, frivolous law suits. But Texas courts increasingly have weaponized the statute against a widening range of people and ideas that are unpopular, unwanted, embarrassing, and, especially, critical of government institutions, including the judiciary. This case shows that regardless of what the statute actually says, the trial courts misconstrue the statute and expect appellate courts to ratify their misconstruction.

Plaintiff's evidence presented to the trial court was unusually detailed compared to other vexatious litigant cases. Other Texas courts will likely look to this Court's opinion for guidance on how to apply the statute. Oral argument would assist the Court.

ISSUES PRESENTED FOR REVIEW

1. Whether the Court should abate the appeal and remand to the trial court
   a. for entering findings of fact and conclusions of law; and
   b. for hearing Plaintiff's TCPA and venue change motions.
2. Whether the Court should find any of the following and, on that basis, reverse or vacate the trial court's orders under the vexatious litigant statute because:
   a. no admissible evidence supported either prong of Chapter 11;
   b. the trial court abused discretion by purporting to extend the seven-year period to eight years;
   c. Defendants' motions—and the hearing—were barred as untimely;
   d. Plaintiff was exempt from the statute;
   e. the trial court committed harmful error or abused discretion (1) by refusing to hear Plaintiff's motion to change venue and TCPA motion; (2) by quashing Plaintiff's subpoenas for witnesses at the hearing; and (3) by considering Defendant Crump's patently fabricated evidentiary exhibits.

INTRODUCTION

TO THE HONORABLE THIRD COURT OF APPEALS:

Although the ostensible question before the Court is whether the trial court correctly applied the statute when it declared Appellant Serafine a "vexatious litigant"—it did not correctly apply it—one question here is whether Texas courts will exercise error correction, against other judges as parties.

The bottom line of this case is that the active defendant-appellees—Jurists Crump, Goodwin, Puryear, and Pemberton—reached a result in the earlier *Serafine v. Blunt* case only by fabricating events and facts that never occurred; by tampering with the record; and by refusing to enforce statutory notice and hearing provisions so that Serafine would not have a chance to present evidence. Serafine sued in December, 2017 for a *prospective* declaration and injunction under the federal civil rights act that would protect due process in the remainder of the *Serafine v. Blunt* case. Since then, Defendant-Jurists and the government lawyers have engaged in every form of obstruction, in order to avoid reaching the merits of that case.

If Defendant-Jurists reached the merits, they would lose. There was no motion and hearing, as they said in their opinion had occurred. There was no "ample" evidence—or any evidence—that they claimed to find in the record.

Computer analysis today makes possible the analysis of thousands of pages of court records in order to find words, sentence fragments, or synonyms or antonyms in order to prove whether statements in an opinion or order are actually rooted in the record. In *Serafine v. Blunt*, such analyses, plus other detailed analyses of the record, showed that Defendant-Jurists engaged in a level of malfeasance rarely described outside of prosecution, if then.[4]

Serafine employed the federal civil rights act because 42 U.S.C. §1983 applies against judges. 42 U.S.C. §1983, Tab 7 (referring to acts or omissions taken in "judicial capacity"); *Heckman v. Williamson County*, 369 S.W.3d 137 (Tex. 2012); *Pulliam v. Allen*, 466 U.S. 522 (1984). This is not news. It has been almost a quarter-century since a Texas sister court correctly observed that "[j]udges are not immune from Section 1983 [civil rights] actions for declaratory or injunctive relief. Judicial immunity, in fact, is not a bar to prospective injunctive relief in a Section 1983 action against a judicial officer acting in his official capacity." *Reyna v. City of Weslaco*, 944 S.W.2d 657, 661 (Tex. App. —Corpus Christi 1997) (citations omitted).[5]

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[4] Another one we are aware of is Albert W. Alschuler, How Frank Easterbrook Kept George Ryan in Prison, 50 Val. U. L. Rev. 7 (2015).
Available at: http://scholar.valpo.edu/vulr/vol50/iss1/3

[5] Section 1983, however, does not necessarily indicate "official capacity." The section uses the term "judicial capacity."

The text of cases and Section 1983 itself is plain, especially after Congress amended the statute some 25 years ago to clarify relief against judges. But some judges have erroneously concluded that judges in our society have been awarded a position above the law. For example, all four Defendant-Jurists here concoct a section in their vexatious litigant motions proclaiming that "judicial immunity" prevents Serafine's suit against them. SR:155, SR:234. In order to get there, they resort to legal and linguistic gymnastics, and conceal that the federal court—on the exact same allegations by Serafine—has already held that judicial immunity does *not* apply because Serafine is not suing for monetary damages.[6] (She still is not.) But Defendant-Jurists simply proclaim that Serafine's requested *prospective* relief is somehow "retrospective." (Perhaps in their appellees' brief Defendants could cite which parts of the Prayer seek damages or actual relief for past acts.) They make other complaints that, if adopted, would nullify Section 1983, because any plaintiff's case would be closed long before any court acted under 1983. The instant case is a textbook example; Defendant-Jurists were able to obstruct the case continuously for three-and-a-half years.

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[6] The federal court held: "But, as Serafine makes clear, and is clear from the First Amended Complaint, Serafine is not suing for monetary damages. Thus, the issue of judicial immunity is irrelevant." Report & Recommendation of the United States Magistrate Judge (adopted). Case 1:17-cv-01123-LY, Document 30, filed 04/04/18, at page 5.

We turn now to the facts. To avoid confusion we use the same terms as in Chapter 11—"Plaintiff" (or Serafine) and "Defendants" (or Defendant-Jurists), who were the Chapter 11 movants in this case..

STATEMENT OF FACTS

The context in which the vexatiousness motion was made is important. Plaintiff had originally filed this suit in federal district court in December, 2017 against Defendant-Jurists Crump, Goodwin, Puryear, and Pemberton. SR:78 et seq.[7] Plaintiff proceeded under 42 U.S.C. §1983. Tab 7. The state-court petition in the instant case is substantially the same as that federal complaint, with more detail. SR:7-138 (original petition); SR: 589-613 (supplement). Both allege on-going, rife, extreme violations of due process in an earlier state-court case, *Serafine v. Blunt*. The *Blunt* case was a sham proceeding, in the trial court and on appeal. The aim of the federal suit was to obtain protection of due process rights—that is, to prevent continuation of the malfeasance in the remaining proceedings. The remaining proceedings were a remand for anti-SLAPP damages in Serafine's favor; collections; any collateral attacks or proceedings.

In addition to allegations, the petition provides evidence in the form of

[7] *Serafine v. Crump,* Case 1:17-cv-01123-LY, Document 5, filed 12/21/17. The case was assigned to the federal judge who had previously been a Chief Judge of the Third Court of Appeals.

detailed analyses of the record. These include computerized word and phrase searches throughout the record and comparisons of extracts from orders and motions from different points in time.

The petition avers, and the analyses show, that Defendants, in their opinions and orders, fabricated procedural events that never took place. SR:31-36 (Petition §§48-54). The Petition alleges in detail other bad acts demonstrated on the face of the record, using certified documents and transcripts collected between 2012 and 2015.

While the case was in federal court, Defendant-Jurists collectively sought to defend against reaching the merits by pleading every possible dismissal theory. All of the following failed, because the district court did not adopt them: SR:1308 (uncontroverted statement).

- absolute judicial immunity;
- official immunity;
- qualified immunity;
- Eleventh Amendment immunity;
- absence of standing;
- Colorado River abstention;
- Younger abstention; and

- that the suit was frivolous, thus violating federal Rule 11.

It is important to note that the federal court accepted none of these defenses and explicitly held the defense of judicial immunity was "irrelevant" to the suit. After a year and some 100 filings, Defendants had failed to win dismissal on the merits or on jurisdiction with prejudice.

The federal court lacks jurisdiction under <u>Rooker-Feldman</u>.

The federal court dismissed only for lack of subject matter jurisdiction without prejudice, under the *Rooker-Feldman* doctrine—a doctrine not applicable in state courts. SR:1309 (uncontroverted statement).

The suit moves to a court that does have jurisdiction—Travis County.

With that outcome in federal court, Plaintiff re-filed the identical suit in state court, invoking the Texas "savings statute." Civ. Prac. & Rem. Code § 16.064. SR:7 et seq. (Petition). At the same time, Plaintiff took appeal to the Fifth Circuit. This is perfectly permissible, under state and federal law, notwithstanding that Defendant-Jurists continue to rail against it, while lacking authority in support.

Defendant-Jurists move it <u>back</u> to federal court, which lacks jurisdiction.

Once they were personally served, Defendants immediately removed the case back to federal court. SR:139 (Notice of removal). That is, they removed the state case back to a court that had just declared it lacked jurisdiction. Indeed, the

lack of jurisdiction had been won by Defendants themselves, on their own theory.

This second round of federal litigation then began on June 24, 2019. The removed federal proceeding lasted another five months, requiring another 80 filings. During this time, Judge Lora Livingston substituted for Judge Crump in official capacity by operation of law.

The case is remanded back to state court.

In November, 2019 the federal court granted Plaintiff's motion to remand the case back to state court.

This, then, is the context in which Defendant-Jurists filed their vexatious litigant motions. At that point, the litigation had generated almost 200 filings in federal court over two years, without defendants obtaining a dismissal with prejudice.

Defendants file vexatiousness motions in state court 7 months after the Petition.

Defendants' next maneuver was to file motions declaring Plaintiff a "vexatious litigant" under Chapter 11, Civil Practice & Remedies Code (CPRC). Defendant Justices filed one such motion on December 4, 2019. SR:152 et seq. This put into effect the automatic stay of Chapter 11. Section 11.052(a) of the statute provides in relevant part: "On the filing of a [vexatious litigant] motion...the litigation is stayed...."

Defendant Crump filed a nearly identical motion with the same text, the next day, on December 5, 2019. SR:218 et seq.

Defendant-Jurists sit on their motions for almost a year.

On October 6, 2020, ten months after filing them, Defendant Justices noticed their vexatiousness motions for hearing on December 7, 2020.

Plaintiff moves to change venue on grounds of local prejudice.

On October 23, 2020, Plaintiff filed a motion to change venue to McLennan County, which would move the case not only outside of Travis County but outside the district of the Third Court of Appeals. SR:446-465 (Motion and supplement); SR:369-445 (Exhibits, including declarations of witnesses). Grounds were local prejudice—that Defendants should not be tried by their own bench, in effect sitting in judgment of themselves. The motion was supported by declarations of six witnesses. *Ibid.*

Plaintiff urged that Defendants' vexatiousness motions should not go forward before Defendants' own bench, at either the trial or appellate level.

Plaintiff testified by declaration under penalty of perjury what is known about how the Travis County bench operates. SR:445-457. The information is known mainly through CLE sessions. Defendants Crump and Livingston, the motion urged, were sitting on the Travis County civil bench where, under the

central docket system and otherwise, the civil district judges communicated and conferred openly with all other civil judges about the cases. They kept separate docket notes seen only by each other, not by the parties or the public (and likely seen also by visiting judges). And the civil judges were used to frequent, open communication about any of the cases before them. This means there were not going to be unbiased judges because they would be influenced by each other.

The remaining defendants (Justices Puryear, Pemberton, and Goodwin) had either recently sat or were still sitting on the appellate bench of the Third Court, which consisted of only six justices. That bench too would likely be tainted by communications from Defendants in the case.

Moreover, any relief granted to Plaintiff would be binding on Defendants' own courts, adding to the conflict.

By keeping venue in Travis County, Plaintiff urged, an inherent conflict of interest arose, where Defendants' liability was decided by their own bench.

No Defendant filed a response to Plaintiff's motion to change venue.

On the same day that Plaintiff moved to change venue—and for the same reasons—Plaintiff appealed to the Local Administrative Judge that the venue change motion itself should be heard outside of Travis County. Later, after other events not recounted here, the presiding judge of the Third Administrative Judicial

Region appointed the Honorable Todd A. Blomerth to preside over the case.

As a result, the case remained in Travis County.

Plaintiff moves to dismiss vexatiousness motions under the TCPA.

On November 16, 2020, Plaintiff filed a motion to dismiss Defendants' vexatiousness motions under the Texas Citizen's Participation Act (TCPA). SR:483-577. Plaintiff urged that Defendants' vexatiousness motions were patently based on, related to, or were in response to Plaintiff's right to petition. As a result they were subject to the TCPA and met the first prong of it. *Ibid.*

Moreover, Plaintiff urged that Defendants' motions could not survive the TCPA motion to dismiss because Defendants lacked "clear and specific" evidence under the TCPA—or any evidence—to meet the requirements of the vexatious litigant statute. *Id.*

No Defendant filed a response to Plaintiff's TCPA motion.

Plaintiff is denied hearing on venue change and required hearing on TCPA.

On November 23, 2020, Defendant Crump filed an "Advisory" to the Court, urging that Defendants' vexatious litigant motions—on account of the stay provision of CPRC Chapter 11—must be heard first, before any of Plaintiff's motions, because all of the latter were "stayed." SR:578-580. Plaintiff countered this on November 30, 2020. SR:581-588. She urged that Defendant's position

transformed the target of a vexatiousness motion into a "sitting duck" in the face of a Chapter 11 attack. That is, the "stay" of Chapter 11 prevented the target from availing herself of ordinary defenses that ordinary litigants otherwise would have. *Ibid.*

After emails from the Judge to the parties, on December 15, 2020 Plaintiff filed a written Objection to the Court's apparent intention to hear Defendants' motions to declare Plaintiff a vexatious litigant, before hearing either Plaintiff's motion to dismiss under the Citizen's Participation Act or Plaintiff's motion to change venue. SR:633-636. Based on the fact that mandamus relief is appropriate if a trial court refuses to hear a TCPA motion, Plaintiff then briefed the trial court in a written request for a hearing on both motions, filed on December 18, 2020. SR:637-643.

The hearing on Defendants' motions to declare Plaintiff vexatious went forward on December 30, 2020. RR.1:1. Shortly thereafter the trial court issued its order declaring Plaintiff vexatious, which required a monetary security, and a prefiling order. Plaintiff's venue change and TCPA motions were never heard.

SUMMARY OF THE ARGUMENT

Defendants' vexatious litigant motions against Plaintiff Serafine were a last-ditch effort to obtain dismissal of a civil rights suit that they could not win on

the merits and that they had failed to dismiss with prejudice—by the time of the hearing—for more than three years. The reason Defendants failed is that the allegations against them were supported by actual evidence of their wrong-doing on the face of certified transcripts and other records.

The trial court did not intend to take evidence of facts and apply the law to the facts. It intended to reach the result that Defendant-Jurists wanted. Consequently, it did not make one or two errors, as in many appeals. It made nearly a dozen, any one of which abused discretion and requires *vacatur* or reversal. The trial court then impaired this appeal by refusing to make findings of fact and conclusions of law (FFCL).

As an initial matter, the Court should abate the appeal and remand to the trial court to enter findings of fact and conclusions of law. The trial court should also be directed to adjudicate two motions on threshold matters that the trial court refused to hear—venue change and Plaintiff's TCPA motion.

In the absence of taking this case back to its starting point, the Court should reverse or vacate the trial court's declaration of Plaintiff as a "vexatious litigant" and the prefiling order. Defendants offered no admissible evidence to meet either the first or second prong of Chapter 11.

The trial court's refusal to hear Plaintiff's TCPA and venue change motions, and its quashing of Plaintiff's subpoenas for witnesses at the hearing, was harmful error or abuse of discretion.

The trial court abused discretion by allowing Defendants *eight years* to tally purported "litigations" when the statute clearly says *seven*. Defendants were erroneously allowed to ambush Plaintiff's counsel with this expanded time frame only hours before the hearing.

Texas courts do not recognize a motion as being "live" until it is set for hearing. Under this principle, Defendants' motions were untimely and barred by laches, and so was the hearing.

The trial court should have found that as a represented attorney Plaintiff was exempt from the statute.

The trial court acted arbitrarily on all of these issues.

ARGUMENT

Standards of Review

Chapter 11 does not set forth a standard of review. This Court has held that a district court's ultimate determination that a citizen is a vexatious litigant is reviewed under an abuse-of-discretion standard. *Leonard v. Abbott*, 171 S.W.3d 451, 459 (Tex. App.—Austin 2005, pet. denied). A court abuses discretion when it

acts "arbitrarily, unreasonably, without regard to guiding legal principles, or without supporting evidence." *Ibid.*

But legal conclusions are reviewed *de novo*. *Mullins v. Mullins*, 202 S.W.3d 869, 874 (Tex. App.—Dallas 2006). Here, the meaning of the words of the statute is a matter of statutory construction—for example the meaning of words such as "seven" and "finally" and "adversely determined." These are important here because the trial court and Defendant-Jurists disregarded the plain meaning and the case law meanings of these words. These are reviewed *de novo*.

I. The Court should abate the appeal and remand to the trial court.

There are two reasons to abate and remand: the trial court should have entered findings of fact and conclusions of law (FFCL); and it should have heard the threshold issues of venue change for local prejudice and whether Defendants' vexatiousness motions constituted SLAPPs that made them subject to the TCPA.

A. The Court should remand for findings and conclusions.

As discussed *infra*, Defendants did not meet the requirement of identifying five qualifying "litigations" or "civil actions" by their own admission.[8] Instead they proposed only "orders"—eight of them—in an attempt to raise the five

[8] The statute defines a "litigation" as a "civil action." CPRC §11.001(2). *Black's Law Dictionary* at the time the statute was passed defined an "action" as a "lawsuit brought in a court." *Black's Law Dictionary* 28, 6th ed. (1990). For clarity, we will use "civil actions."

they needed. For a fair appeal, Plaintiff needs to know which of these eight the trial court credited.

Plaintiff timely requested findings of fact and conclusions of law on January 11, 2021,. the next business day after the January 8th orders. SR:1420-1424. Defendants opposed. SR: 1425-1428. Plaintiff replied. SR: 1429 et seq. The trial court denied the request for findings and conclusions by written order on January 15, 2021. SR:1436. Plaintiff timely filed the required notice of past due findings and conclusions on February 8, 2021, within 30 days of the original request. SR:1451-1454

The trial court's failure to set forth findings and conclusions requires "guessing" the reasons for the bizarre result here: that *none* of the statutory criteria for finding a person vexatious was proved. Omitting FFCL "[f]orc[es] the appellant to guess at the trial court's reasons for rendering judgment...." *Larry F. Smith, Inc. v. The Weber Co., Inc.*, 110 S.W.3d 611, 614 (Tex. App.—Dallas 2003). It is harmful error unless the record demonstrates otherwise. *Ibid.* The record shows multiple reasons why Defendants' evidence failed to meet Chapter 11 requirements, thus the error is harmful.

In their opposition Defendant-Jurists blithely assert that if there is only a single ground, no FFCL are needed. SR:1426. This assertion is fatuous in the face

of their proposing not one, but eight potential reasons for reaching the required five "litigations"—none of which meet the statutory criteria, but for different reasons. *See* discussion *infra.*

Defendants further urged, in order to avoid FFCL, that the trial court made oral findings at the close of the hearing. SR: 1426. But neither oral statements by a judge nor statements in an order will substitute for the absence of FFCL. *Larry F. Smith,*110 S.W.3d at 615 (without FFCL, the trial court's judgment "implies all necessary fact findings in support of the judgment," which would be harmful to the party who properly requested findings and conclusions). Here it is harmful to Appellant to imply evidence that supported the decision—when virtually *no* evidence supported it—and Appellant properly requested findings and conclusions. SR:1420-1424; SR:1451-1454.

Likewise statements in an order "do not constitute true 'fact findings' because they were not separately filed," as required by Tex. R. Civ. P. 299a. *Casino Magic Corp. v. King*, 43 S.W.3d 14, 19 n.6 (Tex. App.—Dallas 2001, pet. denied).

The rationale for requiring FFCL is simple: "[I]f a court fails to file findings when the facts are disputed, the burden of rebutting every presumed finding can be so burdensome that it effectively prevents the appellant from

properly presenting its case to the court of appeals or [the supreme court]." *A.D. Villarai, LLC v. Chan IL Pak*, 519 S.W.3d 132, 135 (Tex. 2017) (cleaned up). Thus the "trial court's failure to file findings...is...presumed harmful, unless the record before the appellate court affirmatively shows that the complaining party has suffered no injury." *Ibid.* (cleaned up). Here, the record does not affirmatively show Plaintiff was unharmed. The hearing was plainly an evidentiary hearing. RR.1, RR.2. More than 400 pages of exhibits were admitted as evidence. (Indeed we had to summarize it in tabular format. SR:1294-1295. *See infra.*)

"[O]n appeal, the usual remedy...[for the trial court's failure to file findings of fact and conclusions of law]...is to abate the appeal for entry of findings and conclusions."[9] The Supreme Court has noted that "[w]hen the trial court's failure is harmful, the preferred remedy is for the appellate court to direct the trial court to file the missing findings." *A.D. Villarai,* 519 S.W.3d at 136 (cleaned up). "If the trial court still fails to file the findings, the appellate court must reverse the trial court's judgment and remand the case for a new trial." *Ibid.*

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[9] Alan Wright, et al., *Appellate Practice and Procedure*, 57 SMU L. Rev. 515, 567 (2004) (citing *Lubbock County Cent. Appraisal Dist. v. Contrarez*, 102 S.W.3d 424, 426 (Tex. App.—Amarillo 2003, no pet.)). *Available at* https://scholar.smu.edu/smulr/vol57/iss3/3

B. The Court should also remand to determine two threshold issues—venue change and TCPA.

Changing venue for local prejudice is a threshold issue. A litigant is absolutely entitled to an impartial forum. Serafine was simply denied the statutory benefit of venue change. The outcome of a biased proceeding may be vacated for bias and denial of due process.

Appellant moved to change venue for local prejudice.

On October 23, 2020, Plaintiff filed a motion to change venue to McClennan County, on grounds of local prejudice. SR:446-460. In the same motion, Plaintiff moved for a bench trial on venue facts and related discovery under Tex. R. Civ. P. 258. Plaintiff attached anticipated discovery, SR:437-441, related to local prejudice, described in the margin.[10]

Plaintiff properly set the motion with the court administrator for hearing on December 7, 2020. The parties had agreed to a full-day hearing on that day, with significant time available for motions other than Defendants' vexatious

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[10] Discovery sought videos of the 5/3/2019 Bench-Bar Conference at which the panel described weekly meetings among Travis judges to *jointly* consider cases. Thus any Travis County judge would not be untainted by extraneous information. Other discovery on District Clerk Price sought to explain how Judge Crump's fabricated "order" of June 24, 2019—to be used as evidence against Serafine in this case —was filed in four unrelated case files, solely for generating false docket entries, as discussed *infra*. SR:437-441.

litigant motions. Plaintiff served the notice of hearing with the motion. SR:442-444.

The motion to change venue was supported by Serafine's declaration, which recounted the known facts about shared information and shared decision-making across the Travis County civil bench. SR:422-426.

In addition, five credible, knowledgeable residents of Travis County testified by declaration that Serafine could not get a fair trial in Travis County. SR:427-436; 463-464.

Appellant moved for protection of first amendment rights under the TCPA.

On November 16, 2020, six weeks before the vexatious litigant hearing, Plaintiff moved to dismiss the "vexatious litigant" motions under the Texas Citizen's Participation Act ("TCPA"), codified at Chapter 27, Civil Practice & Remedies Code (CPRC). SR:483-533. Plaintiff provided a supplement to it the next day, SR:870-884, showing that the 2013 (not 2019) version of Chapter 27 applied to this case. On the same day as the motion, Serafine duly served and filed a notice that her TCPA motion

> has been set for hearing before the Court on Monday, December 7, 2020 at 9:00 a.m. The parties are already aware that a full day has been set for that date, December 7, 2020.

SR:575-577.

The same notice of hearing summarized that

> Three motions were previously set for that same day: (1) Plaintiff's motion to transfer venue; (2) Plaintiff's objection to hearing Defendants' vexatious litigant motions remotely instead of in person; and (3) Defendants' motions to declare Plaintiff a vexatious litigant.

Ibid.

The trial court refused to hear either motion—for venue change or the TCPA.

On November 30, 2020, Plaintiff filed a response, SR:581-588, to an earlier motion by Defendant Crump (termed an "advisory"), SR:578-580, that had sought to hear Defendants' vexatious litigant motions first, *without* first hearing Plaintiff's venue change and TCPA motions. Plaintiff argued she was entitled to a "neutral arbiter," SR:584, that the TCPA took precedence over Chapter 11, and that refusing to hear her motions "renders the stay provision unconstitutional" because it prevented her from putting up an ordinary defense. SR:585.

On December 7, 2020—the day on which all three hearings had been set (for venue change, TCPA, and vexatious litigant)—the trial court heard a different, preliminary matter, and indicated it would first hear the vexatiousness motions, without hearing the venue change or TCPA motions. RRSUPP:3-5.

On December 15, 2020 Plaintiff filed an objection "to what we understand is the Court's decision to hear Defendants' motions to declare Plaintiff

a vexatious litigant... before hearing Plaintiff's motion to change venue or...Plaintiff's [TCPA] motion...." SR: 633-636. In sum, this issue is preserved.

A few days later on December 18th Plaintiff filed a request for hearing, explaining that a TCPA hearing was mandatory and was grounds for mandamus in other appellate courts. SR:637-643.

On January 11, 2021 (the next business day after the trial court's January 8, 2020 order declaring Plaintiff vexatious and ordering security), Plaintiff requested clarification as to whether "the money requirement [applies] retroactively to motions Plaintiff had filed many weeks before the January 8th Orders—i.e., Plaintiff's TCPA motion filed November 16, 2020 and motion to change venue filed October 23, 2020...." SR:1416 et seq. (motion for clarification or second request for hearing on TCPA motion).

And there was still time for a hearing under the TCPA provisions.[11] CPRC §27.004.

But on January 15, 2021, the trial court confirmed in writing its overruling of Plaintiff's objection to hearing Defendants' motions without first hearing the preliminary matters of venue change and Plaintiff's TCPA motion.

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[11] The trial court could have heard the TCPA motion 60, 90, or even 120 days after service of the motion on November 16, 2020. CPRC §27.004. Thus, it could have heard the motion by January 15 or February 15, 2021, or if discovery were ordered even March 15, 2021.

SR:1438-1440.

A trial court has no discretion to decline to hear a TCPA motion. The court in *In re Ahmed Zidan*, No. 05-20-00595-CV (Tex. App.—Dallas July 15, 2020) held that "the trial court must set a TCPA motion to dismiss for hearing within the applicable statutory deadline . . . if the movant makes reasonable efforts to obtain a timely hearing. Mandamus will issue to correct a trial court's refusal to do so." *In re Zidan*, No. 05-20-00595-CV *§B (Tex. App.—Dallas July 15, 2020) (internal citations and quotation marks omitted).

On December 23, 2020, Plaintiff petitioned this Court for a writ of mandamus, SR:650-925, (accompanied by a motion for emergency stay, SR:644 et seq.), which was denied. SR:961. Plaintiff petitioned the Texas Supreme Court, SR: 962 et seq., which denied the request.

We discuss *infra* that declining to hear these threshold matters was harmful error because, among other reasons, Plaintiff would have prevailed. *Not* having a neutral forum, and *not* having the protection against SLAPPs that the legislature intended are grounds for *vacatur* or reversal. Short of that, the Court should restore the parties to their position at the beginning and remand to the trial for hearing both of these matters.

II. No evidence supports the first prong of Chapter 11.

Section 11.054 sets forth a two-pronged requirement for declaring a plaintiff a vexatious litigant. The burden is on *defendants* for both prongs, notwithstanding the court attempted to shift the burden to Serafine. RR.1:31-32. The first prong requires a defendant to show that there is "not a reasonable probability" that plaintiff will prevail in the litigation against the defendant. CPRC §11.054.

Defendants simply did not offer, or get admitted, any evidence that Plaintiff would not prevail. "It is an abuse of discretion for a trial court to rule arbitrarily, unreasonably, without regard to guiding legal principles, ***or without supporting evidence.***" *Leonard v Abbott*, 171 S.W.3d 451, 459 (Tex. App.—Austin 2005) (cleaned up, emphasis added).

At best Defendants articulated free-floating accusations never connected to legal principles. Or they give a sketchy summary of a legal theory without connecting it to facts before the court. *See* SR:152 et seq. (Justices' motion); SR:218 et seq. (Crump motion). (NB: The texts are virtually identical.)

For example, they shriek that Plaintiff re-filed the federally-dismissed suit in state court, but do not cite a legal principle for why this is prohibited. (There isn't one.) Or they quote a general principle, such as the definition of

sovereign immunity, but do not connect it to the facts at hand. For example, why don't the jurists come within the *Ex parte Young* exception to sovereign immunity? By their own admission Defendants note that sovereign immunity applies only to official capacity. But they neglect to address that Defendants were also sued in individual capacity.[12] SR:154-155. In any event former Justice Pemberton was not sitting at the time he filed his motion to declare Plaintiff vexatious, and neither he nor former Justice Puryear were sitting when the motion was heard.

Defendants do not quote Plaintiff's petition or use any part of it as an exhibit. They merely give their own opinions in grandiose, conclusory terms.

Plaintiff's opposition countered each of these generalities. SR:1278 et seq.

Defendants did no better at the hearing in providing evidence to meet Prong One. At the hearing, the judge correctly warned counsel for the Justices that she had not presented any evidence and the judge had not heard any evidence. (She seemed not to understand that evidence needs to be admitted and subjected to the adversary process.) The Justices' counsel had been asserting that "all of the exhibits that have been offered to the Court establish a qualifying litigation." RR.1:26-27.

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[12] Section 1983 refers to "judicial capacity." There is disagreement over whether this is individual or official capacity.

> THE COURT: They've been admitted?
>
> MS. CORBELLO: Yes, Your Honor. They're all also uploaded to the link that your coordinator sent us. First is Exhibit A to Defendant Justices' motion. This is a motion for rehearing after a final judgment.
>
> THE COURT: Whoa. Have there been offers or admissions made of any documentation yet?
>
> MS. CORBELLO: I'm sorry. Say that again, Your Honor.
>
> THE COURT: [] Has there been any documentation or otherwise been offered as evidence in this case by the defendants on this motion as of now?
>
> MS. CORBELLO: Not so far in this hearing, no, Your Honor. We've offered exhibits as part of the motion to declare Ms. Serafine vexatious....

RR.1:27

The justices' counsel then offered to admit the eight exhibits attached to their motion. The judge reiterates that he has not seen any evidence

> THE COURT: This is your file, ma'am, but I haven't seen any -- I'm not aware of any evidence that has been offered so far by way of affidavits or otherwise. I'm aware that I can consider many things in this matter, but I haven't seen anything so far that's been offered.

RR.1:28.

Thereafter Defendant Justices' eight exhibits are admitted, and the Justices' counsel goes through their eight exhibits. RR.1:34 et seq. ***However none is***

described as defeating Serafine's petition—in other words, establishing Prong One.

Serafine then addresses Prong One, relying on her briefing and addressing why judicial immunity does not apply. RR.1:122 et seq. The court, however, interrupts, appears to act as an advocate for Defendants, and effectively cross-examines Serafine, though it is highly non-specific. The justices' counsel offers "to speak more on the Prong 1 issue as the Court had done with Ms. Serafine....," but never follows it up. RR.1:140.

Thus far in the hearing, in sum, Defendants have done nothing to prove a showing under Prong One. Not a single allegation in the Petition has been mentioned.

Judge Crump's attorney then argues, but still presents no evidence to support Prong One. RR.1:140 et seq. Instead he again complains that Serafine re-filed the same law suit in state court as had been filed in federal court. RR.1:141. This is the same straw man that the Justices, SR:152, and Judge Crump, SR:220, raise in their vexatiousness motions, but it does not establish that Serafine would not prevail under the live petition.

Even if there were something wrong with re-filing—which there isn't—it would have nothing to do with Prong One, which exclusively concerns whether

Plaintiff could prevail. Lacking candor to the court, Judge Crump's counsel simply neglects to say that the federal dismissal was *without prejudice.*

"Dismissal without prejudice" unequivocally means "dismissal that does not bar the plaintiff from refiling the lawsuit...." *Black's Law Dictionary*, 10th ed., 569. The correct place to refile it is state court, because the federal court decided it lacked jurisdiction. But Judge Crump's counsel presents no evidence that there was *any* dismissal by the federal court. If he had, the words "without prejudice" on the face of the judgment would have been obvious to the trial court. This is the problem with talk untethered to proof. Unconstrained by evidence, Judge Crump's counsel alleges instead that the federal dismissal was "final" because it "went to the highest court of the land...." SR:141. What, issue, exactly, "went to the highest court"? We don't know, because there's no evidence. Argument and evidence are two different things.

In reality, Defendants themselves understand that nothing about finality bears on the ability to refile a suit dismissed without prejudice—because if there were, they could have defeated this suit under TRCP 91a, or in summary judgment more than two years ago. But of course they did not, because refiling is correct and necessary. Serafine's petition had set forth extensive authority for refiling. SR:13-15. Judge Crump's counsel does not squarely address any of this.

He next mentions that the Fifth Circuit determined "the basis of her claim being dismissed [was] that she did not have Article III standing...." RR.1:142. Again, if evidence had been offered of what the Fifth Circuit's opinion actually said, Plaintiff would advance and the trial court could discern that Plaintiff's "claim" was not dismissed. Only the *appeal* was dismissed. This left in place the federal district court's *Rooker-Feldman* dismissal. Of course, *Rooker-Feldman* applies only to federal, not state, courts.

More importantly, the Fifth Circuit's opinion is irrelevant because we are not in that court. We are in Texas courts, which are not bound by Fifth Circuit judgments.

No Defendant moved for res judicata or collateral estoppel arising out of the Fifth Circuit's judgment. No briefing, no argument, no evidence addressed whether that court's dismissal of the appeal has any affect on the instant case.

In sum, the court below did not take judicial notice of the Fifth Circuit's judgment, but even if it had, it could have done so only to note the existence of the opinion, not its substance. "[C]ourts generally cannot take notice of findings of fact from other proceedings for the truth asserted therein because these are disputable and usually are disputed." *Taylor v. Charter Medical Corp.*, 162 F.3d 827, 830 (5th Cir. 1998). Courts can only "properly take notice, under [Evidence]

Rule 201(b), of [a] judgment for the limited purpose of taking as true the action of [that] court in entering judgment." *Colonial Leasing Co. of New England, Inc. v. Logistics Control Group Intern.*, 762 F.2d 454, 459 (5th Cir. 1985). Other circuits agree that "[a] court judgment is hearsay to the extent that it is offered to prove the truth of the matters asserted in the judgment." *United States v. Sine*, 493 F.3d 1021, 1036 (9th Cir. 2007)(internal quotations and citations omitted). This is not a technicality. The rule exists to avoid the danger that one court will import the errors of another.

In sum, Defendants did not even attempt to present evidence to meet Prong One of Chapter 11. Rendering a judicial finding such as Prong One's likelihood of prevailing is not a matter of ballpark, off-the-cuff, personal impressions. It is not a full trial, but it at least requires assessing the allegations as to whether they could potentially be true (they are), and then determining whether they constitute a cause of action (they do). Nothing in Defendants' motions or evidence at the hearing addressed this. They are evidence, instead, of Defendants' stifling of Serafine's ordinary litigation conduct—a TCPA violation. [13]

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[13] What Defendants' arguments show is their motivation to complain about and seek to stifle normal litigation conduct. To complain about the refiling is to complain about the exercise of the right to petition. To bring a vexatiousness motion to quell the exercise is classic SLAPP conduct and the reason that Texas installed protection against it in the TCPA. "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." *United States v. Goodwin*, 457

III. No evidence supports the second prong, as Defendants concede.

On the second prong, Defendants' motions indicate they are proceeding only under Section 11.054(1)(A).[14] As the Justices' motion falsely states, "Plaintiff Has an Unsuccessful History as a Pro Se Litigant in the Past Seven Years." SR:160; SR:236 (Crump's motion, same). Section 11.054(1)(A) states that the Court may declare Plaintiff vexatious only:

> if the [Defendants] show that...the plaintiff, in the ***seven-year period*** immediately preceding the date the defendant makes the motion...has commenced, prosecuted, or maintained at least five ***litigations*** as a ***pro se litigant***...that have been...***finally determined adversely*** to the plaintiff....

CPRC §11.054(1)(A).

The mandatory criteria are: (1) Serafine began or continued a "litigation," defined as a "civil action, (2) *pro se*, (3) that was "finally determined," (4) "adversely" to her, and (5) between December 4, 2012 and December 4, 2019—seven years before the Justices filed their Motion.

Defendants must prove that Serafine had *five* such cases that met the criteria.

U.S. 368, 372 (1982). The Supreme Court continued, "For while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right." *Ibid.*

[14] We showed above that a "litigation" as a "civil action," CPRC §11.001(2), defined as a "lawsuit brought in a court." *Black's Law Dictionary* 28, 6th ed. (1990).

All Defendants propose the identical list of eight items. SR:161-162 (Justices' list); SR:237 (Crump's list). *None of the items clearly meets all five criteria.* Defendants concede immediately that they are tallying merely "orders," not "litigations." From the Justices' motion: SR:161.

> Serafine has a history of filing frivolous cases and appeals. The following orders qualify under Tex. Civ. Prac. & Rem. Code § 11.054 because they were determined adversely to Serafine:

From Judge Crump's motion: SR:237.

> Serafine has a history of filing frivolous cases and appeals. The following orders qualify under Tex. Civ. Prac. & Rem. Code § 11.054 because they were determined adversely to Serafine:

Note that the word ***final*** is omitted from their description, as discussed below. We turn generally to the types of errors in Defendants' tally.

A. Defendants wrongly count "orders" not "civil actions."

The statute defines a "litigation" as a "civil action." CPRC §11.001(2). Black's Law Dictionary at the time the statute passed defined an "action" as a "lawsuit brought in a court." *Black's Law Dictionary* 28, 6th ed. (1990). A litigation is not an order, motion, or sub-part of a litigation. It is a whole case. As we will see, Defendants' list contains merely sub-parts of cases.

B. Defendants wrongly count when Serafine works with a lawyer.

Spiller explains that "*[i]n propria persona* is synonymous with *pro se*; it refers to a situation in which a litigant represents himself ***without the benefit of a lawyer."*** *Spiller v. Spiller*, 21 S.W.3d 451, 454 (Tex. App.—San Antonio 2000) (emphasis added). In other words, *pro se* does not mean merely self-represented. It means self-represented without the benefit of a lawyer. This means that self-representation with limited-representation counsel—such as Plaintiff employed at all times if she was not fully represented by counsel—is not *pro se.*

At the hearing, the trial court admitted into evidence, SR:64, more than a hundred pages showing "that Serafine has paid out of pocket over $200,000 in these cases," RR.1:115 (Serafine's testimony), including invoices to Serafine, cancelled checks, and representation agreements.[15] *See* Pltff's Ex. 25, 26, 27, 28, 29, 30, 31, 32 at RR.2:147-249.

Defendants, however, misapprehend or misrepresent this factor. They wrongly

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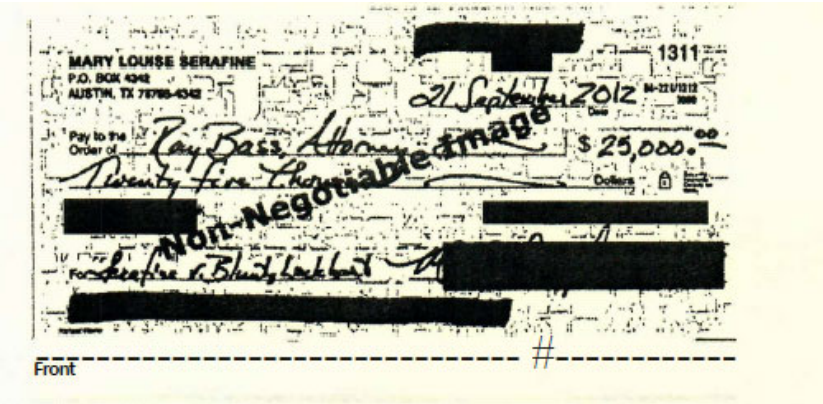
[15] Plaintiff's Exhibit 31 shows several canceled checks at RR.2:238.



claim that "[t]he statute applies whether the plaintiff maintained such litigation as a *pro se* or represented party." SR:161; SR:237. For support, Defendants pull a sentence out of context from *Drake v. Andrews*, 294 S.W.3d 370, 374 (Tex. App.—Dallas 2009, pet. denied). But that is not what *Drake* holds. It notes only that a represented party might still be subject to Chapter 11 on the *first prong only*. *Drake* holds: "Thus, ***the test's prong related to the current suit*** is not expressly tied to being unrepresented." *Drake*, 294 S.W.3d at 374 (emphasis added). More importantly, *Drake* itself concedes that it parts ways with the Third Court on this point.[16] Plaintiff submits that the Court is bound to follow the Third Court.

C. Defendants ignore "finally determined" and wrongly double- and triple-count.

Chapter 11 requires defendants to tally "five" qualifying civil actions. Here, Defendant-Jurists—including those who wrote some of the law in this area—cannot tally to meet the statute. Therefore they take Serafine's three cases and chop them up into sub-parts, thereby double- and triple-counting, even counting one case four times.

If Chapter 11 did not control this type of counting tactic, it could apply without limits to virtually any litigant. To prevent this, Section 11.054(1)(A) mandates that cases

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[16] *Drake* acknowledges it is not following *Leonard* or *Spiller*: "Likewise, we are not bound by the opinions of other courts of appeal (sic) suggesting Chapter 11 is limited in its application to pro se plaintiffs." *Drake*, 294 S.W.3d at 375 (distinguishing *Leonard v. Abbott*, 171 S.W.3d 451, 457-58 (Tex. App.—Austin 2005, pet. denied); *Spiller v. Spiller*, 21 S.W.3d 451, 454 (Tex. App.--San Antonio 2000, no pet.).

tallied be "finally determined." This means—and must mean—that there are no further appeals or disputes between the parties. A "final decision or judgment" is "[o]ne which leaves nothing open to further dispute...."[17] This rule prevents double- and triple-counting, because if a case has not reached finality, there is still a dispute, and the case is on-going and does not count. We do not find a case that deviates from this rule; such a rule would render Chapter 11 absurd.

In addition, Texas courts operate under a "one judgment rule."[18] This means that a single case generates no more than a single judgment.

For this reason, a final trial court judgment may be counted, or the appeal may be counted, but not both. The San Antonio Court explained:

> [The party] appears to contend the district court proceeding and the appeal are separate "litigations" that were "finally determined" against [the opponent]. We disagree. ***An appeal of a judgment in a civil action is not a separate "litigation" as that word is used in Chapter 11.***

Goad v. Zuehl Airport Flying Community Owners Assoc. No. 04-11-00293-CV, n.3 (Tex. App.—San Antonio May 23, 2012) (emphasis added) (reversing vexatious litigant finding). *See also Leonard v. Abbott*, 171 S.W.3d 451, 459-60 (Tex. App.—Austin 2005, pet. denied) (in appellate opinion determining vexations litigant status, counting trial court's *judgment* and *appeals from judgment* as one "litigation"); *Retzlaff v. GoAmerica*,

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[17] *Black's Law Dictionary*, 6th ed., 629 (1990).

[18] Tex. R. Civ. Pro. 301, Judgments, provides in part that "[o]nly one final judgment shall be rendered in any cause except where it is otherwise specially provided by law."

356 S.W.3d 689, 700 (Tex. App.—El Paso 2011) ("We are counting only the appeals, not the underlying trial court cases. [N]o double-counting is occurring here....").

Ignoring this authority, Defendant-Jurists misrepresent that counting separately "both trial and appellate cases" is permitted. SR:161; SR:237. This is blatantly wrong, as Defendants' own citations show. *Retzlaff* explains that there can be no double counting:

> Retzlaff expresses concern that if appeals are included, one case could be counted more than once— first when it is filed in the trial court, again when an appeal is filed, and yet again when discretionary review is sought. ***We are counting only the appeals, not the underlying trial court cases.*** Because ***no double-counting is occurring here***, we express no opinion regarding this concern.

Retzlaff v. GoAmerica, 356 S.W.3d 689, 700 (Tex. App.—El Paso 2011) (emphases added). *See also* note 7 *Jones v. Markel*, No. 14-14-00216-CV *n.7 (Tex. App.—Houston [14th] June 23, 2015) ("as in *Retzlaff*, no double-counting occurs here where the Markel appellees did not seek to separately count both the trial and appellate portions of Jones's lawsuit against Fitzmaurice").

Standing alone, this factor is fatal to Defendants' ability to tally "five" civil actions.

D. Defendants wrongly treat winning relief as "adversely determined."

The plain meaning of "adversely" means unfavorable. Thus, if there is a part of a final judgment on which a plaintiff is successful, it is not "adversely determined." As we will see, Defendants re-characterize the outcomes of Serafine's three cases, attempting

to carve out some unfavorable sub-part of an order. This, however, does not meet Chapter 11's requirement of "*finally* determined adversely." In *McGibney v. Rauhauser*, 549 S.W.3d 816, 828 (Tex. App.—Fort Worth 2018), the court awarded attorney's fees where a party "partially succeeded." The court quoted *Intercont'l Grp. P'ship v. KB Home Lone Star L.P.* , 295 S.W.3d 650, 655 (Tex. 2009) that "[w]hether a party prevails turns on whether the party prevails upon the court to award it ***something.***" *Id.* at 655 (emphasis added). *McGibney* also cites the U.S. Supreme Court in *Farrar v. Hobby*, 506 U.S. 103, 111 (1992). That case holds that in a civil rights suit, "at least some relief on the merits" must be obtained by a party to qualify as a "prevailing party."

Defendant-Jurists, however, ignore this requirement and treat wins as losses. Chopping up each case into sub-parts, Defendants cite even ***unfavorable "orders,"*** as they concede, ***in a winning case.*** *See* discussion below on *Branaman* case.

Rarely does one hear of a case in which one party won every single motion, order, and outcome.

As we will see, across Serafine's three cases, she succeeded entirely on one case, succeeded in part on another, and two of the three are not "finally determined."

E. Defendants wrongly count mandamus when it does not count.

Mandamus that attacks a judgment is not counted. *Retzlaff, supra,* articulated that an unsuccessful petition for mandamus, if it is related to the merits, or challenges the trial court's final decision, <u>*does not count separately from the trial court decision*</u>. That is because such a petition is treated like an appeal and therefore not counted separately. But

if an unsuccessful mandamus "did not challenge the trial court's final decision in the underlying case or relate to the merits of the underlying case" then the petition for mandamus does count toward the total number of litigations determined adversely. *Retzlaff v. GoAmerica*, 356 S.W.3d 689, 700 (Tex. App.—El Paso 2011).

But the burden is on defendants to distinguish between a mandamus that is counted, and one not, otherwise neither is counted.

Defendants mis-apply the rule. They list two mandamuses (Nos. 7 and 8) without presenting evidence of whether they were on the merits. Thus, neither counts. Where a party argues that an exhibit is evidence of a case counted in the tally, but the appellate record does not refer to the actual claim, the case is not counted at all, and supplementing the record on appeal is not permitted. *Walp v. Williams*, 330 S.W.3d 404, 407 (Tex. App.—Fort Worth 2010).

We now address Defendants' list of eight items in detail, to show that none count.

F. Defendants lack evidence for their "eight" civil cases.

To summarize, Defendant-Jurists had to find that, *pro se*, Serafine brought five cases that have ended in the last seven years, on which she obtained no relief. Defendants are nowhere near reaching the required criteria.

As shown above, where Section 11.054(1)(A) required "five litigations...that have been...finally determined adversely...." to Serafine,

Defendants presented, in their own words, "some "orders [that]...were determined adversely to Serafine."[19] They correctly concede that none was "final," none was a "litigation." The case could end here because Defendants simply cannot prove up Prong Two.

It is important to note that the final, adverse determination must be ***within*** the seven years immediately before the filing of Defendants' motions. This Court—under Defendant-Jurists themselves—confirms that the tally of five must be "in" the applicable seven-year period:

> [E]ven if we assume without deciding that the trial court found that appellants had shown that there was a reasonable probability that Perez would not prevail in this litigation and that he had brought "at least five litigations" that had been "finally determined adversely" to him ***in the applicable seven-year period***, it was within the trial court's discretion to deny the motion in the context of this suit.

Physician Assistant Board v. Perez, 03-16-00840-CV, *§ 4 (Tex. App.—Austin Oct. 31, 2017) (mem. op. by Puryear, J., Pemberton, J., and Goodwin, J.) (affirming denial of Chapter 11 motion) (emphases added). As noted, because Defendant-Jurists cannot meet the criterion of "finally determined adversely" in seven years, they simply omit the word *finally* in their description.

[19] Justices' Motion, SR:161; Crump's Motion, SR:237.

> Serafine has a history of filing frivolous cases and appeals. The following orders qualify under Tex. Civ. Prac. & Rem. Code § 11.054 because they were determined adversely to Serafine:

SR:161 (Justices' motion); SR:237 (Crump's motion, same).

This is worth repeating: Chapter 11 unequivocally requires five "civil actions"—not sub-parts of civil actions—that are "finally" determined. Defendants cannot meet these mandatory criteria.

It is important to emphasize that the burden of proof is exclusively on Defendants.[20] Plaintiff need not present any evidence or argument at all. But Defendant-Jurists had no hope of meeting the finality requirement five times. Therefore, they simply ignored it.

We have rarely seen this level of contempt for candor to the court and disregard of the law. But that was the conduct of the four Jurists here. In the same way, although the Jurists had no cases by Serafine ever determined to be frivolous (there aren't any), the Jurists simply proclaimed it falsely. *Ibid.* ("Serafine has a history of filing frivolous cases and appeals....").

Few things demonstrate the veracity of Serafine's allegations in the Petition in this case that these Jurists baldly fabricated events and facts that didn't

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[20] The statute provides that "[a] court may find a plaintiff a vexatious litigant ***if the defendant shows*** that...." CPRC §11.054 (emphasis added).

exist than the Jurists' continued malfeasance before the trial court right here. They should not also do the same before this Court.

Plaintiff objected, without effect, to these and other violations by Defendant-Jurists of how Chapter 11 requires the determination to be made. SR:1278 et seq.

Defendants' list of specific items.

We now turn to Defendant-Jurists' list of purported "civil actions" that they claim should count toward the tally of five. SR:161-162 (Justices' motion); SR:237 (Crump's motion). This list from their motions comprises the exhibits that Defendants entered as evidence at the hearing. RR.l:28,34; RR.2:Defs' Exx. A through H. (We return later to extra exhibits the trial court improperly admitted.)

It is plain only from the styles of these cases that most of the items are from the same three cases. Defendants simply double- and triple-count. More importantly, the statute requires Defendants to "show[]" that their cases meet the requirements of five "civil cases" that in the seven years preceding the motions reached a final and adverse outcome, where the plaintiff proceeded *pro se* conduct without a lawyer. CPRC §11.054. ***Defendants did not "show" or prove these criteria for a single case, much less for five cases.***

The Justices' counsel Ms. Corbello gave brief, unsworn descriptions of

their proposed tally of cases. RR.1:35 et seq. Although she repeatedly states that one item or another "qualifies" she simply never says how or why it does. For example, as to *Serafine v. Blunt* she claims that "the jury verdict was affirmed." RR.1:36. Nothing about this fact proves that the case was final. And it was not. The appellate opinion affirmed in part and reversed and remanded in part. SR:1290. Serafine was ultimately awarded $30,000 in the remand. *Ibid.*

But Ms. Corbello neglects to mention this. She gives no background, history, or context in which any particular exhibit resides, so it is impossible for the judge to determine if it actually qualifies. Moreover, with only general arguments, there are no facts to challenge. Her argument is conclusory, without supporting facts. *Ibid.*

In any event, each of Defendants' items was defeated as a qualifying item by Plaintiff's sworn testimony coupled with documents that set each of Defendants' exhibits in context—for example, three items related to *Serafine v. Blunt,* which was still in progress when Defendants filed their motions, as it is now.

The burden, again, was exclusively Defendants. They simply did not meet the criteria. In a similar situation, the Fort Worth court reversed a trial court's finding that an inmate was a vexatious litigant, because the defendant failed

to show that there was a fifth case meeting the criteria. *Walp v. Williams*, 330 S.W.3d 404, 407 (Tex. App.—Fort Worth 2010).

It is the same here and—Defendants having made no showing that five "civil actions" reached the criteria—this Court must reverse or vacate.

Plaintiff was not required to provide counter-evidence, but she did. We turn now to that evidence.

G. Even if Defendants had evidence, which they did not, Serafine's evidence defeated it.

Serafine presented evidence, testifying under oath. RR.1:57. Plaintiff's Exhibits 1 to 33 were admitted into evidence. RR.1:59-64; RR.2:9-251. In brief, Serafine testified to facts concerning Defendants' list, shown below.[21] RR.1:56-132; RR.1:143-155. Defendants were offered the chance to cross-examine Serafine but did not do so.

Defendants' list of cases is shown below as Serafine presented it in her brief in opposition to the vexatious litigant motions. SR:1278-1394. In that list the styles of cases are color-coded to show there are only three of them:

Serafine v. Blunt—blue.
Serafine v. Branaman–red
Serafine v. Crump–black

[21] Non-essential information is omitted to facilitate readability.

To anticipate the results, we will see that *Blunt* and *Crump* were not completed at the time the Jurists' motion was filed. Indeed both are still in progress now and on appeal in this Court. *Branaman* arose during Serafine's political campaign running for Texas senate in 2010. Far from losing *Branaman*, Serafine won that case.

Jurists' Purported List of Eight "Qualifying Litigations"

> (1) *Serafine v Blunt, et. al.*, Civ. No. 17-0597 (Texas Supreme Court Feb. 16, 2018) (Motion for Rehearing denied);
>
> (2) *Serafine v Blunt, et. al.*, Civ. No. 17-0597 (Texas Supreme Court Dec. 1, 2017) (Petition for Review denied);
>
> (3) *Serafine v. Branaman*, No. 1:11-cv-01018 (W.D. Tex Sept. 24, 2014) (final judgment against Serafine issuing take nothing judgment);
>
> (4) *Serafine v. Branaman*, 810 F.3d 354 (5th Cir. 2016) (affirming lower court's take nothing judgment against Serafine for her prior-restraint claim);
>
> (5) *Serafine v. Crump*, No. 17-cv-1123 (W.D. Tex July 30, 2018) (order and final judgment dismissing Serafine I);
>
> (6) *Serafine v. Blunt*, 03-16-00131-CV, 2017 WL 2224528 (Tex. App.—Austin May 19, 2017, pet. denied), reh'g denied (July 21, 2017) (affirming jury verdict against Serafine);

(7) In re Serafine, 03-14-00775-CV, 2014 WL 6891889 (Tex. App.—Austin Dec. 5, 2014, no pet.) (denying Serafine's petition for writ of mandamus); [22]

(8) In re Mary Louise Serafine, No. 19-50183 (5th Cir. 2019) (denying Serafine's petition for writ of mandamus).

Plainly, there are not eight cases here, only three.

Why Defendants lack of evidence is fatal to all items.

We undertake in section IV below why the trial court abused discretion in admitting extra exhibits at the hearing—***more than a full year after the filing of the motions,*** instead of seven years "immediately preceding" it. This re-writes the statute outside the legislature's intent. If this were the law, defendants could file a Chapter 11 motion, then wait to see the outcome of plaintiff's cases. But even assuming the trial court could have considered the extra exhibits, Defendants simply failed to present evidence that any of them meet the necessary criteria (finality, adversity, *pro se* status, within past seven years). The reason is that the document's context within the case is not apparent from Defendants' self-serving descriptions. Examples follow.

Defendants cannot show that Items 3 and 4 count toward the tally of five.

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[22] This discovery mandamus occurred in *Serafine v. Viking*, *supra*, arising from the same facts as *Blunt,* and consolidated with it. It would be error to count a discovery mandamus. In no sense it is a final determination on the merits. It is analogous to an interlocutory appeal.

To counter Defendants' Items 3 and 4—the case of *Serafine v. Branaman*—Serafine testified to Plaintiff's Exhibit 1. Serafine won this case. It cannot be found to be "adversely determined" under Section 11.054(1)(A).

This case is important, however, because it is emblematic of the intentional falsity—in a word, fraud—with which Defendant-Jurists assembled their list. Conduct like this by ordinary litigants would be punished with sanctions. Undoubtedly Defendants provided no testimony or other proof of meeting the Chapter 11 criteria because they could not do so.

Serafine's testimony began with Plaintiff's Exhibit 1. Exhibit 1 is the actual "Final Judgment After Remand" in the *Branaman* case. This was the final judgment in the district court after Serafine had reversed the district court on appeal at the Fifth Circuit. Exhibit 1, where highlighted, awards Serafine the relief requested—that the Texas Psychologists' Licensing Act "is HEREBY DECLARED unconstitutionally overbroad," and the relevant agency is "HEREBY ENJOINED from enforcing [it] against any person...." This was not "adversely" determined as to Serafine.

Defendants, however, had to work hard to give the false impression that this was "finally" a loss. They went back into the record searching for any adverse opinion. This is shown in Exhibit Plaintiff's Exhibit 2—the district court's docket

sheet for the case. The highlighted portions show that Defendants picked out an order *more than two full years* before the final judgment.

Exhibit 3, Serafine testified, is the check that awarded Serafine fees for her attorneys on the case. Note that Serafine was not "without the benefit of a lawyer" as the term *pro se* is defined.

Exhibit 4 is the Fifth Circuit docket sheet for the case. It shows that the Attorney General, not Serafine, was the losing party who petitioned for rehearing, which was denied.

Serafine did draft the appellate briefs in the case. Exhibit 5 shows that respected organizations filed amicus briefs. Exhibit 6 shows headlines in periodicals, showing that the case had important implications. Exhibit 7 is a list of other cases citing to the Fifth Circuit's opinion.

Exhibit 8 shows the invoice to Serafine for her limited-representation counsel while she was handling the briefing. Serafine testified that this amount was allowed as fees in the district court.

After Serafine's appellate lawyer took over the appeal, Exhibit 9 shows a filing in the Fifth Circuit made by him. Haynes Boone is a respected firm.

Exhibit 10 shows the trial counsel who signed and filed the *Branaman* complaint. This is not *pro se*.

All of these facts were available to Defendants on the public record, including the district court and appellate files from which they drew documents they falsely claimed losses, while not showing finality.

It bears repeating that these are *judges* and *justices* presenting to a court a raft of cases that do not meet the clear statutory requirements. Serafine even had to explain why their Item 4—the Fifth Circuit's rejection of Serafine's prior restraint theory in *Branaman*—is not a final adverse determination. The explanation is that in "[e]very single First Amendment case in the nation the plaintiff pleads multiple theories. You have to do that. [] [W]e pled prior restraint...overbreadth...equal protection and other theories. It is not a loss to the accused party to not have every single theory approved by the Fifth Circuit." RR.l: 70. She continued, "What matters is did the plaintiff get the relief or some relief [?] [] And in the *Branaman* case, Serafine happened to win all the relief she requested." *Ibid.*

That Defendant-Jurists' used the *Branaman* case to convince a court they had met two of the five required "litigations" under Chapter 11 shows that, first, Defendants had no hope of meeting the statute, but they were relying on other judges to cover for them; and second, Defendant-Jurists have no reservations about engaging in knowing, abject deception.

Eliminating the Branaman items from the list leaves six. They need five.

Omitting the *Branaman* items leaves only six—items 1, 2, 5, 6, 7, and 8—as potential "litigations." If two more are eliminated, Defendants would not be entitled to a vexatiousness finding.

Item 5, Serafine v. Crump, cannot be counted, because it was not "finally determined."

We maintain that Item 5 in Defendant-Jurists' claimed list cannot be counted because it is identical to the instant state proceeding (which is clearly in progress) except at an earlier time, when it was in federal court:

> (5) *Serafine v. Crump*, No. 17-cv-1123 (W.D. Tex **July 30, 2018**) (order and final judgment dismissing Serafine I)

But even if the state and federal cases are considered separate cases, it is indisputable that the July 2018 judgment that Defendants refer to was not "finally determined" at the time Defendant-Jurists filed their "vexatious litigant" motion in early December, 2019. The reason is that, in December, 2019, the case was still on appeal at the Fifth Circuit.[23] Serafine had admitted Plaintiff's Exhibit 13. It shows that the Fifth Circuit's opinion came down well after December, 2019—in fact on **February 6, 2020.** Plaintiff's 13 is shown below: RR.2:63.

---

[23] The statute requires "five litigations...that have been...finally determined adversely...." when the motion is made. CPRC §11.054(1)(A).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
February 6, 2020
Lyle W. Cayce
Clerk

No. 18-50719

MARY LOUISE SERAFINE,

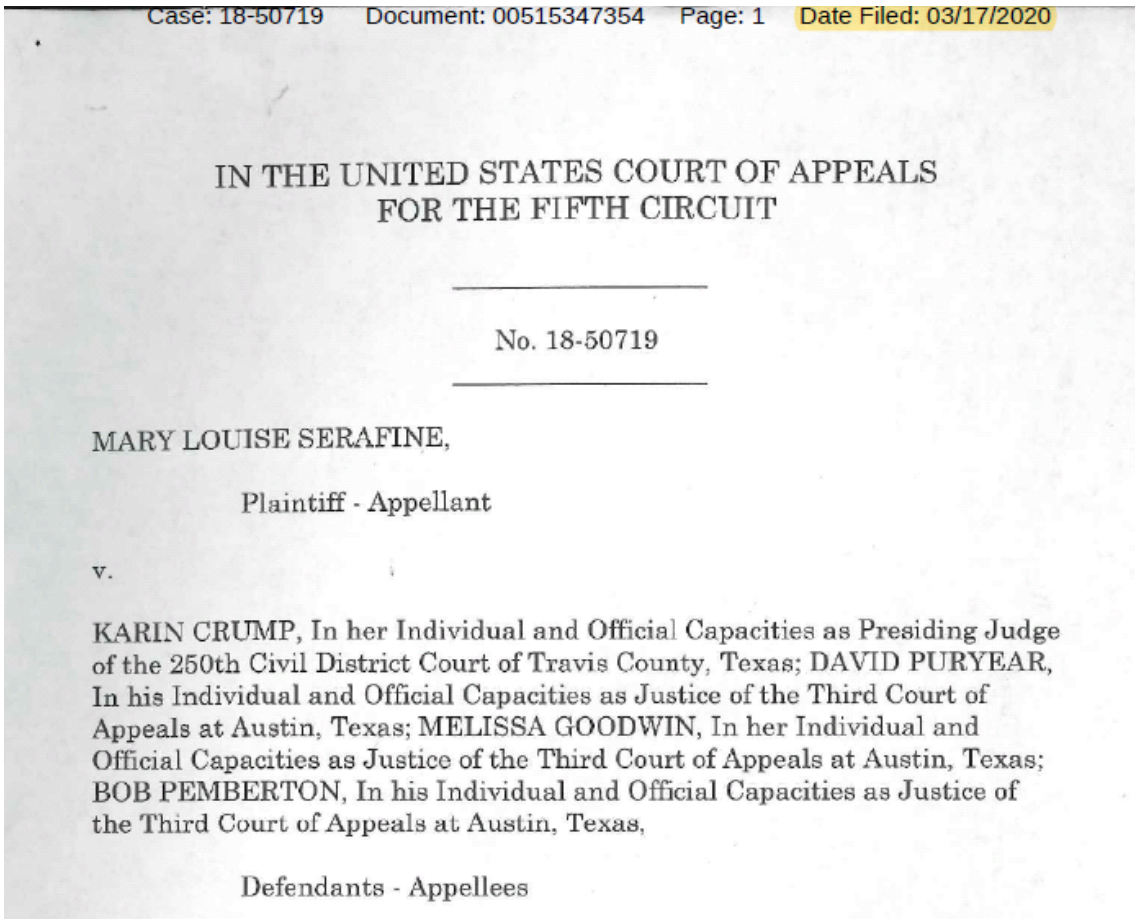
Plaintiff - Appellant

v.

KARIN CRUMP, In her Individual and Official Capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas; DAVID PURYEAR, In his Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas; MELISSA GOODWIN, In her Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas; BOB PEMBERTON, In his Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas,

Defendants - Appellees

Indeed the decision was not final until after rehearing was denied on **March 17, 2020.** Serafine showed Plaintiff's Exhibit 14: RR.2: 71.



Case: 18-50719 Document: 00515347354 Page: 1 Date Filed: 03/17/2020

IN THE UNITED STATES COURT OF APPEALS
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No. 18-50719

MARY LOUISE SERAFINE,

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v.

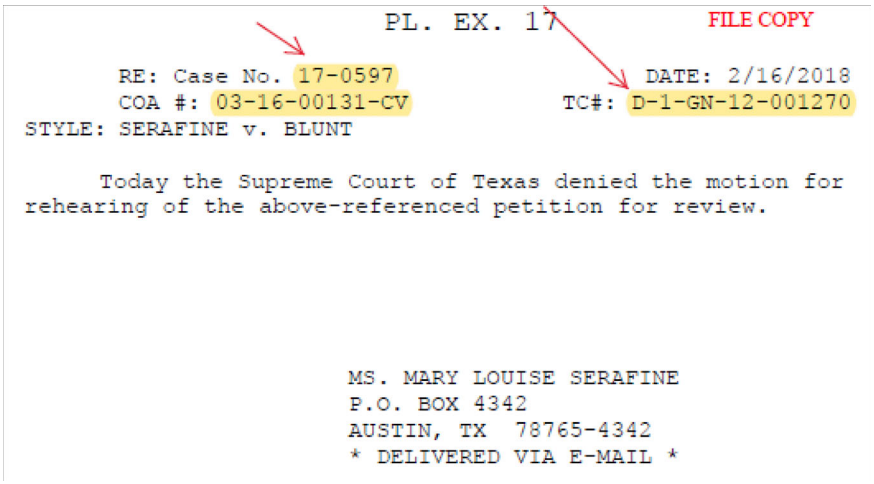
KARIN CRUMP, In her Individual and Official Capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas; DAVID PURYEAR, In his Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas; MELISSA GOODWIN, In her Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas; BOB PEMBERTON, In his Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas,

Defendants - Appellees

With only five items left, all three from Serafine v. Blunt are eliminated.

Defendants' remaining items are all from *Serafine v. Blunt*—a case that was not final when Defendants filed their motions in December, 2019 and is not final even now. The Court could verify that it is currently on appeal before this Court today as Case No. 03-20-294-CV.

But continuing her testimony, Serafine showed that Defendants' Items 1, 2, and 6 are all the same case. Serafine showed Plaintiff's Exhibit 17, a notice from the Texas Supreme Court, listing the trial court case number, the appellate case number, and the Supreme Court case number all on the same notice: RR.2:98.



PL. EX. 17

FILE COPY

RE: Case No. 17-0597
COA #: 03-16-00131-CV
DATE: 2/16/2018
TC#: D-1-GN-12-001270
STYLE: SERAFINE v. BLUNT

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MS. MARY LOUISE SERAFINE
P.O. BOX 4342
AUSTIN, TX 78765-4342
* DELIVERED VIA E-MAIL *

At Plaintiff's Exhibit 19, Serafine showed the trial court docket in Cause No. D-1-GN-12-1270, which, in the highlighted portions, shows the case active as of December, 2020—just shortly before the hearing. Indeed also highlighted, RR.2:104-105, are entries showing that, on the exact date the Justices filed their motion, five filings were made in that case.

There is nothing about the 12-1270 case that makes it "finally determined" when Defendants filed, or a year later, or now. Plaintiff's Exhibit 21

shows Blunts filing a notice of appeal in 12-1270 just recently, on June 8, 2020. This is a year-and-a-half after Defendant-Jurists filed their motions.

All three items, numbers 1, 2, and 6, must be eliminated as candidates.

Astoundingly, throughout Serafine's testimony, defense counsel asked no questions, did no cross-examination of Plaintiff. The judge asked no questions. Yet he somehow ignored overwhelming evidence that Defendants could *not* meet the statute, coupled with the fact that there was *no* evidence—not even a scintilla—they had done so. This is legally and factually insufficient.

Moreover, Plaintiff's Exhibits 25 to 33 demonstrated the vast extent to which Serafine was represented by counsel in this case, including full representation and limited-representation counsel.

Defendants, at most, have a discovery mandamus and a merits mandamus. Two is not five.

Plaintiff's remaining exhibits and testimony dispatch with all of Defendants' eight claimed exhibits, except possibly one mandamus, which is unclear. Plaintiff's brief in opposition to Defendants' vexatious litigant motions gave a chart, summarizing the flaws in Defendants' proposed list of eight. SR:1294-1295.

SUMMARY OF DEFENDANTS' EIGHT ITEMS

A single "NO" in any column means that the item cannot "count" toward the tally.

Defendants' Item Number	**Is it a whole "litigation" ?**	**Was it *pro se* with no counsel?**	**Finally determined ?**	**Adversely to Serafine?**	**In 7 yrs. before Dec., 2019?**
1-*Blunt* case, Motion for Rehearing denied by Tx. Sup. Ct.	**No.** It's a motion or part of appeal and can't be double counted.	**No.** Hired & paid limited scope counsel.	**No.** Remand still had to take place when rehearing denied.	**No.** Mere denial of discre-tionary rehearing; leaves parties in same position.	Yes.
2-*Blunt* case, PFR denied by Tx. Sup. Ct.	**No.** It's a dis-cretionary review/part of appeal & can't be double counted.	**No.** Hired & paid limited scope counsel.	**No.** Same case as No. 1; remand still had to take place yet.	**No.** Mere denial of discre-tionary PFR; leaves parties in same position.	Yes.
3-*Branaman* case, take-nothing judgment in federal district court.	**No.** Because it was appealed & cannot be double-counted.	**No.** Was repre-sented at pretrial & trial. Hired & paid limited scope counsel for post-trial brief & argument.	**No.** Judgment never became final b/c it was reversed on appeal.	Yes.	Yes.
4-*Branaman* case, 5th Circuit strikes down statute under First Amendment; grants overbreadth theory, but not prior restraint.	Yes. Combining Nos. 3 + 4 = one civil action.	**No.** Hired & paid limited scope counsel.	Yes.	**No.** Serafine won all relief + $48K in fees.	Yes.

Defendants' Item Number	**A whole "litigation" ?**	***Pro se* with no counsel?**	**Finally determined ?**	**Adversely to Serafine?**	**In 7 yrs. before Dec., 2019?**
5-*Crump* case, dismissal in federal district court ***without prejudice*** for lack of subject matter jurisdiction under *Rooker-Feldman* doctrine.	Yes, but only if No. 8 is not double-counted.	**No.** Hired & paid limited scope counsel.	**No.** Case was on appeal at 5th Circuit when Motions were filed in Dec., 2019.	Maybe. Court has discretion to consider ***without prejudice*** to refiling as not adverse.	Yes.
6-*Blunt* case, Third Court affirming in part and reversing and remanding in part.	**No.**	**No.** Was repre-sented by counsel for 3-1/2 yrs., then hired & paid limited scope counsel.	**No.** Case was still on remand to the trial court when Motions were filed. *See* One judgment rule.	**No.** Adverse in part, favorable in part and remanded. Remand awarded Serafine $30K.	Yes.
7-Mandamus denied on discovery issue against co-defendant of Blunts, later consolidated with *Blunt* case.	**No.** Defendants fail to mention what the claim was.	Yes, *pro se* on this mandamus, then same counsel as No. 6, after consolida-tion.	Yes.	Yes.	Yes.
8-*Crump* case, 5th Circuit denied petition for supervisory mandamus.	**No.** Defs. fail to mention claim and challenge to a final decision is not counted.	**No.** Hired & paid limited scope counsel.	Yes.	**No.** Denial leaves parties in same position as before.	Yes.

IV. The trial court abused discretion by re-writing the Chapter 11's "seven years" to "eight years."

Defendants conducted an "ambush" less than 24 hours before the hearing, which the trial judge permitted only by abusing discretion.

The context is that the morning before the hearing, the trial judge called an "emergency" hearing at which he quashed all of Plaintiff's subpoenas for calling witnesses at the hearing. Plaintiff had urged why the witnesses were properly subpoenaed. SR:1259-1265. A few hours later, and more than a year after the filing of their motions, Defendants filed a "Supplement" to their motions, purporting to add two more exhibits to the eight they had previously identified. SR:971-980. In addition to the original eight exhibits now marked A through H, Defendants sought to add I and J. There was no explanation and no authority. At the hearing, the transcript shows, Defendants wanted to add K and L. Over Plaintiff's objection, the trial court admitted them. Later defense counsel said their exhibits had expanded to letter M. RR.1:28-33.

In response to Defendants' late-filed Supplement, Plaintiff filed a verified motion for continuance, seeking to obtain extra preparation time. SR:1266 et seq. It was denied by written order. SR:1439. Plaintiff also filed written objections to the Supplement and a motion to strike it. SR:1274-1277. Plaintiff urged that there

was no time for "locating in old case files the relevant documents for defeating this new material" and that "[t]hese exhibits raise new issues that Defendants have not raised at any time in the past year." SR:1274. The trial court by written order denied the motion to strike. SR:1439.

The trial court also overruled all of Plaintiff's objections at the hearing and admitted, apparently, the five additional documents ***not in existence when Defendant-Jurists filed their motions in December, 2019.***

Plaintiff's counsel had no time to prepare to address the new material. Worse, the colloquy at the hearing shows that neither of Plaintiff's counsel could see the new exhibits and had not seen them previously.[24] The transcript also shows that at some points, a party cannot hear or the court reporter cannot hear. The hearing was held for about five hours via Zoom. The inability of Plaintiff's counsel to see, hear, and exchange exhibits in the normal way is evident. RR.1: *passim*.

Serafine had objected to holding a Zoom hearing at the outset for these very reasons—that the trial court would be called upon to make factual findings based on documentary evidence and testimony, and Zoom did not provide the

[24] The trial court questions Serafine about her documents being up-loaded to the "Box," which they were, but the night before, Serafine emailed exhibits to the court reporter, who generously up-loaded them.

required characteristics of what we call a "hearing." SR:466-482 (Objection to remote hearing). As Plaintiff informed the trial court, Justice Scalia famously wrote nearly two decades ago that "virtual confrontation" protects only "virtual rights," not real ones.[25] And commentators have suggested that virtual appearance disables a judge from determining "who is telling the truth and who is not." *Ibid.* By written order, the trial court overruled Plaintiff's objections to a remote hearing. SR:631.

"Seven years means only "seven years.

All of the new exhibits (except one) are dated *after* the filing of Defendants' motions in December, 2019:

---Exhibit I is plainly dated February 6, 2020.

---Exhibit J is plainly dated October 19, 2020.

---Exhibit K is the same as the former Item 8. Serafine had previously testified that this mandamus cannot be counted under the case law because it went to the merits, the same as a judgment.

---Exhibit L is a federal suit on constitutionality of Chapter 11 first filed on December 28, 2020. This case is in progress now, and therefore not final

---Exhibit M is merely the denial of a TRO in the same case as Exhibit L. It is not

---

[25] Order of the Supreme Court, 207 F.R.D. 89, 94 (2002) (Scalia, J.) (statement explaining rejection of proposed amendment to Federal Rules of Criminal Procedure that would have allowed testimony by two-way video presentation to replace live trial testimony upon certain findings).

Quoted in J.A. Ettinger, D. Gerger, and B.J. Pollack, Ain't Nothin Like the Real Thing: Will Coronavirus Infect the Confrontation Clause? 44, MAY, Champion 56.

a final determination.

We find no case that allows importing into the Chapter 11 tally new events that seek to reform the status of what was apparent at the time a defendant filed his motion. The statute is clear. Section 11.054(1)(A) provides that "the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a *pro se* litigant...that have been: (A) finally determined adversely to the plaintiff" CPRC §11.054(1)(A).

The term "that have been" refers to the date of filing the motion. Filing the motion cuts off the seven-year period, and it ends at that point. No case of which we are aware gives a different interpretation other than that the "seven years immediately preceding" applies to when a countable civil action must be "finally determined adversely" to plaintiff.

The trial court here abused discretion by reading "seven years immediately preceding" the motion to mean *"seven years before the motion, plus—if defendants delay the hearing for a year—then defendants get eight years."* This meaning reaches an absurd result and the extra words are not in the statute.

Why this reaches an absurd result.

Under the trial court's interpretation, a defendant is incentivized to file a Chapter 11 motion even if he has not grounds to do so; then, he can simply delay

the hearing for a year—why not two or three or five?—and wait to see how the cases pan out. Or even, as here, if plaintiff files a new case after the motion is filed, he'll count that also.

Under this interpretation, the statute is Kafkaesque. The legislature could not have imagined this result.

V. Defendants' motions—and the hearing—were untimely.

A motion in Texas, even when filed, is not "live." It must be set for a hearing and until then is a nullity. *Metzger v. Sebek*, 892 S.W.2d 20, 49 (Tex. App.—Houston [1 Dist.] 1994).[26] Here, the setting of the vexatiousness hearing ***19 months after filing of the petition*** is barred by laches. The petition was filed May 10, 2019. The vexatiousness hearing was not held until December 30, 2020. Plaintiff was prejudiced because delay caused an appeal to be dismissed on jurisdictional grounds, ***which was not final when Defendants filed their motions.*** Appellant could have moved to have the vexatiousness motions heard as soon as they were filed, which would have properly captured the time period of seven years. Instead, Defendants engineered a delay of *seven months* instead of the usual

[26] *Metzger v. Sebek*, 892 S.W.2d 20,49 (Tex. App. —Houston [1st Dist.] 1994) holds that "[u]ntil the defendants filed their notices of a hearing on the motions for sanctions, [opposing party] was entitled to treat those motions as potential nullities." *See also Hinojosa Auto Body & Paint, Inc. v. FinishMaster, Inc.*, No. 03-08-00361-CV (Tex. App.—Austin Dec. 12, 2008) (filing of a motion with the court clerk does not establish the motion was brought to the attention of the trial court).

three months. The trial court should not have added an extra year to the statutory time period allowed (and we have found no case law in support). The legislature could not have intended this bizarre result—that the 90-day deadline can be skirted by filing a frivolous removal to federal court. Removal, and waiting a year, was to obstruct the case. The trial court's quashing of Appellant's witness subpoenas prevented Appellant from being able to prove this point.

Laches applies. "Two essential elements of laches are (1) unreasonable delay by one having legal or equitable rights in asserting them; and (2) a good faith change of position by another to his detriment because of the delay." *Caldwell v. Barnes*, 975 S.W.2d 535, 538 (Tex. 1998).

Plaintiff acted to her detriment because she was entitled to and did treat the motions as nullities, but in doing so she failed to prevent the expansion of the seven year's time, unwittingly allowing the trial judge to prejudice the case.

VI. The trial court abused discretion in finding Plaintiff vexatious, because Plaintiff was exempt from the statute under CPRC §11.002.

CPRC §11.002 bars applying the statute to a represented attorney. Serafine is herself an experienced attorney licensed in Texas since 2005.[27] Section 11.002(a) provides that "[t]his chapter does not apply to an attorney licensed to

[27] Serafine is admitted to practice in California, Texas, New York, and the District of Columbia. She graduated from Yale Law School and is a member of the Austin Bar Association and Capitol Area Trial Lawyers Association.

practice law in this state unless the attorney proceeds *pro se*." CPRC §11.002. This section has not been interpreted by Texas courts.

The term *pro se* means *"without the benefit of a lawyer."* [28] This means that a licensed attorney is ***not*** *pro se* if he has availed himself of "the benefit of a lawyer" by (1) acting as co-counsel jointly with another lawyer, or (2) hires and pays for "limited scope representation."

Having counsel as "limited scope representation" is not pro se.

"Limited scope representation" is authorized by Disciplinary Rule of Professional Conduct 1.02(b) which provides that "[a] lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation." At the same time, these are genuine attorney-client relationships, and the Disciplinary Rules of Professional Conduct are still in force. The representation cannot be too cursory. Indeed "the client may not be asked to agree to representation so limited in scope as to violate Rule 1.01, or to surrender the right to terminate the lawyer's services...." Comment 5, Rule 102.

---

[28] *Spiller v. Spiller*, 21 S.W.3d 451, 454 (Tex. App.—San Antonio 2000) ("*[i]n propria persona* is synonymous with *pro se*; it refers to a situation in which a litigant represents himself or herself without the benefit of a lawyer") (citations omitted).

See also Black's Law Dictionary, 6th ed., 1221 (1990) (describing "one who does not retain a lawyer and appears for himself in court"). *Black's* sixth edition was in effect when the vexatious litigant statute was passed in 1997. Although *Spiller* cites to *Black*'s 5th edition (not the 6th), both definitions are the same.

Chapter 11 does not apply to Serafine because she is not pro se.

The trial court was informed that Serafine acts as co-counsel with Mr. John Vinson. She clearly has "the benefit of a lawyer" and is not *pro se*. RR.1:115-118. Therefore the statute cannot be applied against Serafine under CPRC §11.002. At the hearing, Serafine presented as evidence Plaintiff's Exhibits 25 to 33 (invoices, etc.) showing the great extent to which she was represented in the matters tallied by Defendants. RR.2:147-250.

VII. Other harmful error.

A. Refusal to hear Plaintiff's venue change motion was harmful error.

Serafine would have prevailed on the motion to change venue because Rule 258 requires granting it unless opponents show that the Travis County residents supporting it are not credible. But they are credible because each testified to facts showing they are contributing members of the community (a military veteran, a city councilman, etc.) and testified that they have at least some experience in our courts. Defendants never attacked their credibility by counter-declarations, as the rule requires, or otherwise. Tex. R. Civ. P. 258 provides:

> RULE 258. SHALL BE GRANTED
> Where such motion to transfer venue is duly made, it shall be granted, unless the credibility of those making such application,

> or their means of knowledge or the truth of the facts set out in said application are attacked by the affidavit of a credible person; when thus attacked, the issue thus formed shall be tried by the judge; and the application either granted or refused. Reasonable discovery in support of, or in opposition to, the application shall be permitted, and such discovery as is relevant, including deposition testimony on file, may be attached to, or incorporated by reference in, the affidavit of a party, a witness, or an attorney who has knowledge of such discovery.

Thus, Serafine would have prevailed because the Rule requires that the motion "shall be granted."

B. Refusal to hear Plaintiff's TCPA motion was harmful error.

Plaintiff's TCPA motion showed that Defendants' motions were unquestionably for the purpose of infringing Serafine's first amendment right to petition, as defined by the TCPA. Those motions openly sought to punish Serafine for filing suit against the jurists by dismissing the suit *and* eliminating Serafine's right to freely file suits in the future. This would have shifted the burden to Defendants to attempt to present "clear and specific" evidence in support of their claims. Defendants could not have meet the burden under the "clear and specific" standard. Although Serafine did not have the burden, she attached some 40 pages of exhibits showing why Defendants could not meet this standard. SR:534-573

(Serafine's declaration, exhibits).

Alternatively Serafine moved for limited discovery under the TCPA. SR:485. But if the trial court will not hear the motion, there is authority in sister courts that the court of appeals must issue mandamus.

C. Preventing Plaintiff from calling witnesses was harmful error.

Plaintiff was absolutely entitled to present her best case in showing why, under Prong One, she would have prevailed in the litigation. Nevertheless, the trial court quashed subpoenas and issued protective orders for all five witnesses that Plaintiff subpoenaed. These were a paralegel from the Crump team, and Defendants Crump, Puryear, Pemberton, and Goodwin. The trial court held an "emergency" meeting the morning before the hearing to prevent Defendants from testifying. It should be noted that Defendants Puryear and Pemberton had not been sitting jurists for a year at that point. Thus, their appearance as witnesses would have disrupted no judicial schedule.

Plaintiff filed objections to the quashing the subpoenas and protecting the witnesses, arguing primarily that Defendants were not entitled to bring draconian motions such as under Chapter 11 and at the same time hide from testifying. SR:1059-1065

A trial court's evidentiary decisions are typically reviewed under a

discretionary standard. Defendants presented no grounds for protecting the witnesses that could not have been handled with objections rather than preventing the necessary testimony. The trial court's decision worked a harm on Plaintiff's ability to defend against the motions and abused discretion.

D. Considering Crump's patently fabricated exhibits was harmful error.

Prong One of the vexatious litigant statute required defendants to show that Serafine could not prevail in her Section 1983 action against defendant-jurists. In an attempt to make that showing, Defendant Judge Crump claimed that she had recused "from all pending cases...in which Plaintiff is a party" and, therefore, "Plaintiff's claims are moot...." SR:228 et seq. (Crump Motion). This does not comport with substantive mootness doctrine, but the more important point is that Defendant Crump's claimed evidence for recusal (and thus mootness) was based on documents that never existed and were entirely fabricated by her and her attorneys. The fabrication is plain on the face of the record in two ways. First, anyone familiar with court records would know that merely producing a snippet of *docket entries* that describe documents, instead of producing *the documents themselves* is trying to hide the actual documents. Second, when the court records for each case are actually examined (here, by Appellant) it is plain that a fabricated document with the wrong caption, case number, and parties was entered, merely to

generate the false docket entry. In this way Judge Crump and her attorneys fabricated six separate documents claiming to evidence Crump's "recusal" that never occurred; they collected the six self-made documents into Exhibit 3, SR:281-283, and Exhibit 5, SR:290-296.

This is important for two reasons. First, Judge Crump's motion to declare Serafine a "vexatious litigant" was taken in bad faith. Few things indicate groundless, bad faith litigation conduct than fabricating exhibits because the actual extant documents do not meet your purpose.

Second, after Serafine filed objections and a motion to strike the exhibits, SR:617-630—showing in detail what the actual court documents were on file—the trial judge nevertheless overruled the objections and declined to strike any exhibit. SR:1437 and Tab 10 (Order).

The trial court should have struck the exhibits on grounds they were patently fabricated, after which Serafine would have moved for "death penalty" sanctions. This Court and others have held that fabricating evidence warrants the strongest of sanctions, such as "death penalty" striking of pleadings. This is because "[c]ourts cannot effectively order someone to take back fabricating the evidence...," and likewise, "simply excluding the fabricated evidence would be no punishment and, in fact, would fail to address the inherent problem." *JNS Enter., Inc. v. Dixie Demolition, LLC*, 430 S.W.3d 444, 453 (Tex. App.—Austin 2014).

Sister courts concur. *Response Time, Inc. v. Sterling Commerce*, 95 S.W.3d 656, 658 (Tex. App.—Dallas 2002) (fabricating evidence did not warrant lesser sanction before striking of pleadings).

Instead the trial judge rewarded the fabrication and misrepresentation by allowing the exhibits to stand. He then protected them by quashing Serafine's attempts to subpoena Judge Crump or at least the paralegal to testify about the source of the exhibits. This extraordinary judicial malfeasance shows why Serafine needed and should have been awarded the protection afforded by Section 1983.

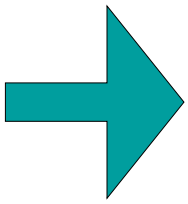
We turn now to Judge Crump's Exhibit 3, SR:281-283, and Exhibit 5, SR:290-296, claimed to be "evidence" supporting mootness of Serafine's 1983 action. This was "Prong One" of Crump's motion to declare Serafine vexatious.

Exhibit 3 is not an "order of recusal," but a sham.

The relevant case in which Judge Crump should or might have recused is *Serafine v. Blunt*. That is the on-going case in which Serafine is seeking Section 1983 relief. The correct way for a judge to recuse is to issue an order of recusal. The order should be under the caption of the case. It should be served on all parties. Instead, Judge Crump signed a self-made "Order of Voluntary Recusal" *not* under the caption of *Serafine v. Blunt*. Instead she used the caption of the instant Section 1983 case itself—the very case that is on appeal here! There was

no one to serve because the only other parties were Serafine and Crump's fellow judges. Moreover, the order was void because it signed *after* Judge Crump had already removed the case to federal court.

Further, in order to create the "order," Judge Crump had to designate herself the "Presiding Judge" of this very case—*Serafine v. Crump*—that is on appeal in this Court. Below is the caption and her signature as "presiding judge" on the purported "recusal" order. *See* SR:281-283. Plainly, the caption shows Judge Crump herself as a party.



NO. D-1-GN-19-002601

MARY LOUISE SERAFINE, *Plaintiff*, V. KARIN CRUMP, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS PRESIDING JUDGE OF THE 250TH CIVIL DISTRICT COURT OF TRAVIS COUNTY, TEXAS, AND MELISSA GOODWIN, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS JUSTICE OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND DAVID PURYEAR AND BOB PEMBERTON, IN THEIR INDIVIDUAL CAPACITIES AS FORMER JUSTICES OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND IN THEIR FUTURE OFFICIAL CAPACITIES, IF ANY, *Defendants.*	§	IN THE DISTRICT COURT Filed in The District Court of Travis County, Texas JUN 26 2019 At 10:00 A M. Velva L. Price, District Clerk OF TRAVIS COUNTY, TEXAS 345th JUDICIAL DISTRICT

After the body of the order, here is Judge Crump's signature as "presiding judge" on the same page. *See* Exhibit 3, SR:281-283.

Signed this 26th day of June, 2019.

PRESIDING JUDGE
KARIN CRUMP

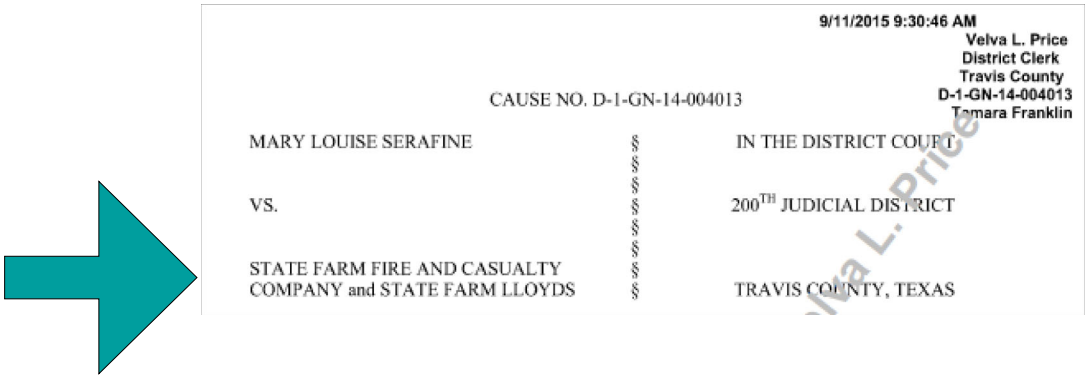
This is a sham order. Judge Crump is not the presiding judge of the case identified in the caption—that is the instant case in which she is a defendant. The "order" was created solely to give the false impression of a "recusal" that never took place.

Exhibit 5 consists of falsified docket entries.

But standing alone the "order" did not show that Judge Crump actually *filed* a recusal order in any particular case involving Serafine. Of course, Defendant Crump could not actually file a genuine order in a case involving

Serafine because those few were closed, Crump was never a judge in them, and/or such an order would have to be served on parties. So, Judge Crump fabricated five more documents. These purported to be "dockets" in some cases showing fake "docket entries" that purported to show that in the file is an "ORDER FOR VOLUNTARY RECUSAL." In reality, a clerk was apparently induced to create these fake docket entries, which were then collected into Crump's Exhibit 5, SR:290-296. Exhibit 5's misleading title proclaims that these exhibits are "Voluntary Recusals in Case Docket Sheets." A knowledgeable reader would immediately detect that he is being shown some docket entries—not an actual recusal order. But the trial judge wrongly accepted these and overruled Serafine's objections.

For example, here is an old case that settled, where Serafine was fully represented by counsel. Below is the correct caption, which reads *Serafine v. State Farm*:

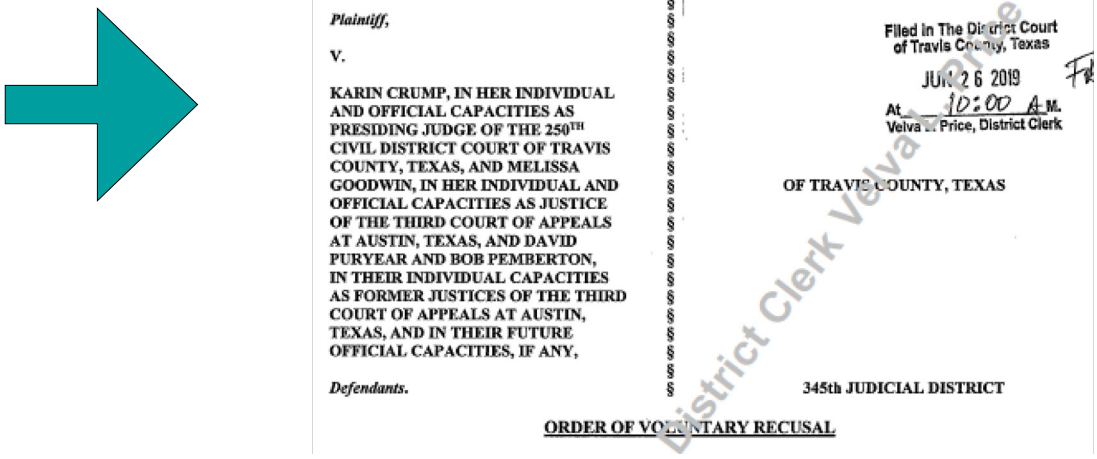


9/11/2015 9:30:46 AM
Velva L. Price
District Clerk
Travis County
D-1-GN-14-004013
Tamara Franklin

CAUSE NO. D-1-GN-14-004013

MARY LOUISE SERAFINE	§	IN THE DISTRICT COURT
VS.	§	200TH JUDICIAL DISTRICT
STATE FARM FIRE AND CASUALTY COMPANY and STATE FARM LLOYDS	§	TRAVIS COUNTY, TEXAS

But what the file contains is only the "order" we saw at Exhibit 3, with the caption that does not match and Judge Crump "presiding":



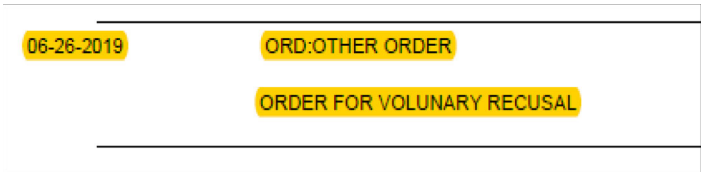
NO. D-1-GN-19-002601

MARY LOUISE SERAFINE,	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
V.	§	
KARIN CRUMP, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS PRESIDING JUDGE OF THE 250TH CIVIL DISTRICT COURT OF TRAVIS COUNTY, TEXAS, AND MELISSA GOODWIN, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS JUSTICE OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND DAVID PURYEAR AND BOB PEMBERTON, IN THEIR INDIVIDUAL CAPACITIES AS FORMER JUSTICES OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND IN THEIR FUTURE OFFICIAL CAPACITIES, IF ANY,	§	**OF TRAVIS COUNTY, TEXAS**
Defendants.	§	**345th JUDICIAL DISTRICT**

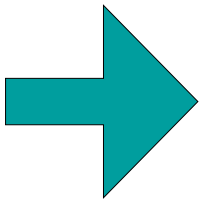
Filed in The District Court of Travis County, Texas
JUN 26 2019
At 10:00 A.M.
Velva L. Price, District Clerk

ORDER OF VOLUNTARY RECUSAL

Then, from this non-matching order, the docket entry of "recusal" is generated. Exhibit 5 shows the reader only this docket entry—not the mis-filed document:



Another example. Below is the correct caption for a TCAD case arising from Serafine's property loss at the trial Judge Crump held.

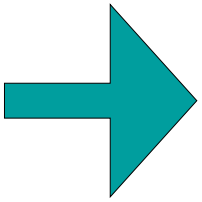


12/11/2018 7:54 AM
Velva L. Price
District Clerk
Travis County
D-1-GN-18-006961
Hector Saucin-Tijerina

D-1-GN-18-006961

MARY LOUISE SERAFINE	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TRAVIS CENTRAL APPRAISAL DISTRICT	§	261ST JUDICIAL DISTRICT
	§	

Again Judge Crump filed in this TCAD case her "order" with the non-matching caption:

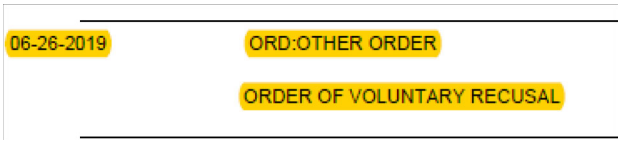


NO. D-1-GN-19-002601

MARY LOUISE SERAFINE,	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	Filed In The District Court of Travis County, Texas
V.	§	
	§	JUN 26 2019
KARIN CRUMP, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS PRESIDING JUDGE OF THE 250TH CIVIL DISTRICT COURT OF TRAVIS COUNTY, TEXAS, AND MELISSA GOODWIN, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS JUSTICE OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND DAVID PURYEAR AND BOB PEMBERTON, IN THEIR INDIVIDUAL CAPACITIES AS FORMER JUSTICES OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND IN THEIR FUTURE OFFICIAL CAPACITIES, IF ANY,	§	At 10:00 A M. Velva L. Price, District Clerk
	§	**OF TRAVIS COUNTY, TEXAS**
Defendants.	§	**345th JUDICIAL DISTRICT**

ORDER OF VOLUNTARY RECUSAL

Then, Exhibit 5 contains only the docket entry generated, claiming a recusal, but not showing the order itself:



It is the same in every case. The trial judge should have sustained Serafine's objections to the fabricated exhibits and struck them. Serafine would then have moved to strike Judge Crump's vexatiousness motion as a sanction.

This Court should reverse or vacate, rendering the order that the trial court should have made.

CONCLUSION & PRAYER

The Court should reverse or vacate entirely the trial court's order declaring Serafine a vexatious litigant and requiring security, Tab 16, and its pre-filing order, Tab 15. *Walp v. Williams*, 330 S.W.3d 404, 408 (Tex. App.—Fort Worth 2010) (where the "trial court's order requiring Walp to post security was based on the trial court's finding that Walp was a vexatious litigant," [and] "the trial court abused its discretion by finding Walp a vexatious litigant, the trial court also abused its discretion by ordering Walp to post the security....")

In the alternative, the Court should remand to the trial court, directing it to enter findings of fact and conclusions of law, or directing it to hear Plaintiff's TCPA and venue change motions, or all of the foregoing. Appellant seeks all other

relief to which she is entitled.

Respectfully submitted,

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CERTIFICATE REGARDING COMPLIANCE WITH RULE 9.4(e)

With reference to Tex. R. App. P. 9.4(e)(i)(2)(B), this brief was produced using Word Perfect software and contains fewer than 14,998 words, as determined by the software's word-count function, excluding the sections of the document listed in Texas Rule of Appellate Procedure 9.4(e)(i)(1).

This brief complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a proportionally spaced typeface using Word Perfect software in Times New Roman 14 point font in the main text and no smaller than Times New Roman 12 point font in footnotes.

By: M. L. Serafine
Mary Louise Serafine
State Bar No. 24048301

CERTIFICATE OF SERVICE

My signature below certifies that on the 2nd day of August, 2021, I served the foregoing document on the parties listed below through the Court's electronic filing system.

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APPELLANT'S APPENDIX

No. D-1-GN-19-002601

Mary Louise Serafine, Plaintiff, v. Karin Crump, in her individual and official capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas, and Melissa Goodwin, in her individual and official capacities as Justice of the Third Court of Appeals at Austin, Texas, and David Puryear and Bob Pemberton, in their individual capacities as former justices of the Third Court of Appeals at Austin, Texas, and in their future official capacities if any, Defendants.	§	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 345TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Mary Louise Serafine ("Plaintiff"), seeking to vindicate her civil rights, and for the benefit of all others similarly situated, files this Petition pursuant to 42 U.S.C. § 1983, for violations of the Fourteenth Amendment of the U.S. Constitution, by all Defendants and those acting in concert with them.[1]

[1] The Fourteenth Amendment provides in relevant part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

I. Nature and Purpose of Suit

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

2. Plaintiff demands a trial by jury, tenders the appropriate fee, and makes this demand at a reasonable time before trial. Tex. R. Civ. P. 216.

3. The purpose of this suit is to obtain the prospective declaratory or injunctive relief, or both, that is promised by 42 U.S.C. §1983. That section, in relevant part, provides:

> Every person who, under color of any statute...of any State...subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution...shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, ***except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.***

42 U.S.C. §1983 (1996)(emphasis added).[2]

4. Section 1983 specifically applies against these defendants as judicial officers.[3]

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

U.S. Const. amend XIV, § 1.

[2] The words in bold were added by the Federal Courts Improvement Act of 1996.

[3] *See Pulliam v. Allen*, 466 U.S. 522, 536 (1984)(noting "absolute judicial immunity" does not apply to prospective relief); *see also Bauer v. Texas*, 341 F.3d 352,

On this question neither the U.S. Supreme Court's *Pulliam* decision nor the Fifth Circuit's *Bauer* decision has been overruled.

5. Defendants at all relevant times were judicial officers in the lower state courts of Texas, acting in their judicial capacity. Plaintiff was largely represented by experienced counsel, until the untimely death during the second appeal of then-lead counsel Mr. Ray Bass. Plaintiff also acted as an attorney on her own behalf. Plaintiff and her counsel appeared before Defendants in their respective courts.

6. Prospective relief is needed because there is a forthcoming remand in a case where Serafine is the plaintiff, Cause No. D-1-GN-12-1270, as well as related proceedings. The remand needs hearings, discovery, and adjudication of an estimated $100,000 in attorneys fees and sanctions owed to Plaintiff under Civ. Prac. & Rem. Code Chapter 27. Related proceedings include collection proceedings, a collateral attack on the judgment in D-1-GN-12-001270, and likely appeals.

7. There would be little point for Plaintiff—or any other litigant in a similar situation—to participate in proceedings before Defendants or those in concert with them, without the protection against imminent constitutional injury promised by

---

357 (5th Cir. 2003)("prospective relief against a judicial officer" is not barred)(citing *Pulliam v. Allen*, 104 S.Ct. at 1981).

Section 1983. These Defendants have already worked at length, unlawfully, to deprive Plaintiff of her rights, property, and reputation, a feature of liberty. Without such relief, adjudication of the remand and resolution of Cause No. D-1-GN-12-001270 will be yet another sham proceeding. The favored party in the state-court case has already made unlawful collection demands on Plaintiff, clearly counting on the same favoritism in the future that they enjoyed in the past.

8. *Denials of Due Process*. Defendants' unlawful acts include denial of the rights of due process, and specifically denials of:

a. the right to notice;
b. the right to be heard
c. the right to decisions made by a neutral arbiter;
d. the right to appeal;
e. the right to put on evidence;
f. the right to adjudications based on existing law, that is, *stare decisis*;
g. the right to public proceedings instead of secret, *ex parte* proceedings;
h. the right to have an accurate record of proceedings;
i. the right to obtain adjudication; and
j. other elements of fundamental fairness.

9. *Refusals to Rule*. In addition to overt denials of Plaintiff's rights, all Defendants repeatedly rendered *de facto* denials of those same rights by refusing to adjudicate *only Plaintiff's* properly-presented motions and pleas, while the other side got immediate, favorable adjudication—even overnight. Instead Defendants ignored Plaintiff's papers, leaving an empty record. Examples are detailed below under "Refusals to Rule."

10. *Distorting the Record*. Defendants tampered with or affirmed tampering with

court records, such as unlawfully issuing and then approving Defendant Crump's orders to the court reporter to remove proper exhibits, and otherwise eliminating documents from the record.

11. *Allowance of Perjury*. Defendant Crump knowingly allowed incorporation of perjury into the record and made rulings based on it. False testimony, back-dated affidavits, fake notary stamps—when these were brought to her attention, CR:719-730, she ignored the evidence and continued to rely on testimony she knew was false.

12. *Ex Parte Communication*. Defendant Judge Crump engaged in *ex parte* communication with Plaintiff's opponents and issued orders accordingly, such as eliminating Plaintiff's trial exhibits *by her blanket order—with no notice or hearing in advance—that Plaintiff's counsel* ***could not offer any exhibits at trial***. The underlying defendants had filed a motion after hours the night before; by the next morning, Judge Crump granted it. Defendant Panel ignored Plaintiff's appeal of the issue. On the record Judge Crump referred to "emails" related to her ruling, but neither Plaintiff nor her counsel had received any of these emails.

13. The purpose of Defendants' repeated denials of due process and equal protection—and affirmance of those denials—was to deprive Plaintiff of her property, reputation, and right to meaningful court process and trial by jury.

Timeliness of This Action

14. The filing of this action is timely. Exhibits attached hereto are true and correct

copies of what they appear to be.

a. The savings clause of Civ. Prac. & Rem. Code § 16.064 applies to this action, because this Petition is the second filing of the same action previously filed timely in federal district court for the Western District of Texas as Case No. 1:17-cv-01123-LY (the "First Action").

i. The First Action and the instant Petition are the same action because they concern

(1) the identical parties;

(2) the identical nucleus of facts and events—specifically, Defendants' actions in appellate Case No. 03-16-00131 and trial court Cause No. D-1-GN-13-004023 and Cause No. D-1-GN-12-001270;

(3) the identical claim, that is, that Defendants violated Plaintiff's Fourteenth Amendment rights in a manner that warrants the relief requested; and

(4) the identical relief, that is, a prospective declaration or injunction, or both, under 42 U.S.C. § 1983 in forthcoming proceedings.

ii. The federal court in which the First Action was filed is a trial court.

iii. The First Action was timely filed against Defendant Crump on Nov. 28, 2017. ***See*** **Exhibit 1** (file-stamped Complaint).

iv. The First Action was timely amended, thereby becoming the operative complaint, to include Defendants Goodwin, Puryear, and Pemberton on Dec. 21, 2017. ***See*** **Exhibit 2** (file-stamped First Amended Complaint).

v. At no time did Defendants Crump, Goodwin, Puryear, or Pemberton raise a statute-of-limitations or any other objection to the timeliness of Plaintiff's filing of the First Action.

vi. Defendants took the position throughout the First Action that the federal district court lacked jurisdiction over this suit. Additionally Defendant Crump took the position in the First Action that the federal court should abstain from exercising any jurisdiction that it had.

vii. The federal district court dismissed the First Action solely for lack of subject matter jurisdiction, and without prejudice, in a judgment entered on July 31, 2018. ***See*** **Exhibit 3.** The judgment stated, "On this date, the court rendered an order dismissing Plaintiff's First Amended Complaint without prejudice for lack of subject-matter jurisdiction."

viii. The dismissal of the First Action is not yet final at the time this

Petition is filed because it has been appealed.[4]

(1) On Feb. 1, 2019 the U.S. Court of Appeals for the Fifth Circuit docketed appeal of the First Action. ***See*** **Exhibit 6.**

(2) The appeal of the First Action has not yet been decided at the time this Petition is filed. All Defendants have appeared. Appellees' briefs are not due until May 28, 2019, which is after the filing of the instant Petition.

(3) At the earliest, Plaintiff would have 60 days after the appeal is decided (several months from now) to file this Petition.

(4) All Defendants are expected to take the position on appeal that the federal district court lacks subject matter jurisdiction over the First Action.

b. Notwithstanding the operation of the savings clause of Civ. Prac & Rem. Code § 16.064, all Defendants' liability for the wrongful acts alleged herein did not begin to accrue, at the earliest, until February 28, 2018. That is the date on which the Third Court of Appeals issued its mandate, reversing in part and remanding the proceeding to the trial court. ***See*** **Exhibit 7**

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[4] On August 29, 2018, Plaintiff Serafine timely filed a Notice of Appeal. ***See*** **Exhibit 4.** On Jan. 3, 2019, Plaintiff timely filed an Amended Notice of Appeal, **Exhibit 5**, following the federal court's denial of Serafine's motion to amend the judgment on Dec. 10, 2018.

(Mandate of Court of Appeals in Case No. 3-16-00131-CV, regarding Trial Court Case No. D-1-GN-12-001270).

c. The remand and any proceedings related to Cause 12-1270 are the future proceedings that make necessary this action for prospective relief.

d. At the earliest, Plaintiff would have two years—or alternatively four years—after the date of February 28, 2018 to file any action concerning all Defendants' conduct, that is, until February 28, 2020.

e. All Defendants also had notice in the First Action of Plaintiff's proposed Second Amended Complaint, notwithstanding that the federal district court did not permit the amendment. ***See*** **Exhibit 8** (file-stamped proposed Second Amended Complaint).

II. General Allegations

15. The events described below are only examples of Defendants' past conduct. The examples show Defendants' failure to comply with even the most minimal requirements of Fourteenth Amendment due process and equal protection. In the descriptions of their conduct below—regardless of whether that conduct is described as "knowing" or "intentional" or with similar words—that failure by Defendants in every case is deliberate, willful, wholly in bad faith, sustained consistently over a long period of time, coordinated, and extreme.

16. Defendants repeatedly and knowingly violated, and unless deterred will continue to violate, Plaintiff's rights under the Fourteenth Amendment, including

deprivation of property and civil rights, without due process of law and in denial of equal protection of the laws.

17. As detailed below, Defendants carry out sham proceedings in which they have already determined the outcome; they act without reference to evidence or law.

18. *False Opinions and Orders*. It is not easy to accomplish this and still create orders, opinions, and other court documents that the public (not to mention higher courts) expects to recite evidence, facts, procedural history, and law. Thus, Defendants accomplished and concealed their violations by creating orders, judgments, and opinions in which they willfully and knowingly made materially false statements of dispositive facts—facts of which Defendants had direct, personal, and contrary percipient knowledge because the true facts took place before Defendants themselves. They fabricated events and facts; they ignored, disavowed, or minimized actual events and facts that had occurred before them; and they tampered with the record, among other unlawful acts.

19. To give an example, which is more fully detailed below: Defendants created judicial documents falsely reporting

    a. that the $10,000 monetary sanction against Plaintiff had been heard, when Defendants knew it had not been heard;

    b. that "findings" were made when Defendants knew that no such "findings" were made;

    c. that Plaintiff's "claims" had been "dismissed," implying a merits decision,

when Defendants knew those claims were never dismissed on the merits;

d. that a "motion" for sanctions against Plaintiff had been granted, when Defendants knew that no motion related to the order had ever been filed or made, by anyone; and

e. that Defendants Puryear, Goodwin, and Pemberton had reviewed the "entire record" and located there "ample evidence" for the "findings," when Defendants knew that no such evidence existed in the record or anywhere else.

20. *Bad Faith Rulings*. Defendants' judicial documents otherwise repeatedly made statements that, if not wholly false, were made in bad faith, and were intentionally misleading.

a. As only one example, Defendant Judge Crump denied one of Plaintiff's bills of exception, claiming that the exhibit was not offered "at trial." Nothing in the relevant rule requires only offerings "at trial." But even so, Judge Crump knew the plain truth—that the document in question did not come into existence until weeks after trial. The document was relevant, then, only after trial. To deny the bill because it was not offered "at trial" is to mock the court. It is a caricature of bad faith.

b. *Another example*: Further impairing Plaintiff's right to notice, Judge Crump emailed the parties that, if Plaintiff's opponents in the underlying case were making post-trial claims against Plaintiff for attorneys fees, those

parties in the underlying case *were not required to file any written motions*. Kafka's character "K" did not face so arduous a task as Plaintiff did, trying to figure out what to argue against. What facts, evidence or case law could Plaintiff possibly divine, in order to argue against them? The underlying defendants took the cue and filed no motions. Plaintiff was left to oppose the invisible.

c. It was the same with Judge Crump's bad faith "adjudication" of Plaintiff's boundary, which ultimately made Plaintiff's property inaccessible by car.

i. *No notice*: At no time ever was there notice to Plaintiff of any claim against Plaintiff's land or any claim for re-drawing Plaintiff's boundary.

ii. *No hearing*: Judge Crump promised but then refused a hearing on the boundary or the taking of any evidence on it whatsoever. So, even if Plaintiff and her counsel could have divined the claim somehow and prepare a defense, there was no chance to present it.

iii. *No prior chance*: Judge Crump, without excuse, had even denied Plaintiff's counsel *any rebuttal* at trial—again reneging on her own prior ruling.

21. *Announcing False Deadlines*. These events were followed by Judge Crump's apparent intent to prevent further objection or a possible mandamus by announcing a 10-day deadline for all parties to submit affidavits, briefs, etc. on the boundary

issue. But without waiting for the deadline, Judge Crump entered an order depriving Plaintiff of her land—within 72 hours of making the announcement. The damaging order was then quickly entered into county property records.

22. *Denials of Appeal*. Defendant Panel affirmed these outrages on pretextual grounds without parallel in Texas law—such as unexplained "waiver" rulings and false statements.

23. Likewise Judge Crump—affirmed by Defendant Panel—eliminated *all evidence that Plaintiff would have presented* from Plaintiff's bills of exception. Defendant Panel ruled that, without the bills, there was nothing to appeal. On this pretext, Defendant Panel affirmed.

24. Defendants' acts at all relevant times were willful, wholly in bad faith, and carried out with the purpose of depriving Plaintiff of property and due process.

25. Defendants will continue unless stopped. Plaintiff therefore claims the protection of Section 1983—providing, as it does, a proceeding on a claim of "deprivation of rights" "against a judicial officer" who acted in his "judicial capacity"—before Defendants inflict further constitutional injury. That injury is imminent, because Plaintiff needs to go forward with the remand and related proceedings.

26. *Relief Sought is Prospective Only*. Plaintiff seeks only the prospective declaratory or injunctive relief, or both, promised by Section 1983. Plaintiff does not seek money damages. Plaintiff does not seek in this action to re-litigate the underlying substance of the litigation in which Defendants' acts occurred. Rather, Plaintiff

seeks the declaratory and injunction relief against state judicial officers provided by Section 1983, as protection against future denials of due process and equal protection.

27. *Acting in Concert with Others*. All Defendants acted in concert with others and are likely to continue to do so.

a. Judge Crump acted in concert with other Travis county judges.

b. Justices Puryear, Pemberton, and Goodwin acted in concert with the then-remaining three justices of the Third Court—Chief Justice Rose and Justices Field and Bourland—in addition to that Court's clerks and staff attorneys or law clerks. The Court's decisions are researched and/or drafted by staff; they are circulated among the entire court. Some of Defendant Panel's former colleagues, clerks, law clerks, and staff attorneys at the Third Court of Appeals remain in their positions at the time of this filing.

c. Judge Crump acted in concert, at a minimum, with Judges Meachum, Sulak, and Byrne.

i. Some or all of the Travis County civil district judges rule as a panel of judges would rule, instead of acting as independent courts.

ii. They conduct unrecorded proceedings among themselves—meeting sometimes weekly—outside of open court. By their own description, at these meetings the judges trade substantive determinations about the lawyers, litigants, and cases that are before

them. These are not merely administrative or docket management decisions that are shared, but substantive ones.

iii. While the lawyers or litigants are appearing in front of one judge, that judge may sometimes covertly discuss the case by "instant message" with another judge. These are *ex parte* conversations outside the litigants' knowledge, influence, or hearing. In effect another judge may therefore act as a witness. The impressions or prejudices of one judge therefore influence others.

iv. The judges also enter two separate sets of docket notes. One is public, entered on the public docket. The other is hidden, read only by the other judges. These notes influence even visiting judges. Judge Crump described these secret notes on the record.

v. These communications on such a large scale outside of open court are a denial of the right to be heard before a neutral tribunal and of the right to present evidence, objection, and cross-examination.

d. In much of the unlawful conduct in which Judge Crump engaged, she was assisted by or the conduct was known to Judge Amy Clark Meachum, Judge Tim Sulak, and Judge Darlene Byrne. Together they acted, in effect, as a panel in Plaintiff's case rather than Judge Crump's acting as an independent court. All of them acted in concert, at a minimum, to prevent Plaintiff's discovery. At a hearing on April 27, 2015 Judge Crump declined to rule

until, she said, "I'm going to talk to Judge Meachum and Judge Sulak." 6.RR:13. Other examples of collaboration among these three in Plaintiff's case are on the record but not detailed further here.

e. Judge Darlene Byrne was significantly conflicted in the case through her spouse, Dan Byrne. On information and belief, Viking's counsel employed *ex parte* communication to set in front of Judge Byrne a motion that would be preposterous in any fair setting: a motion to terminate *all* discovery by Plaintiff—but not discovery of any of the opposing parties—a year before trial. There is a detailed reason why Salvador Chavarria (Viking's owner)—with Dan Byrne as outside counsel—were desperate to stop discovery, but detailing it is unnecessary here. Suffice it to say Judge Byrne would have granted the motion. But Plaintiff moved to disqualify her. Nevertheless Judge Meachum later effectively ordered Viking's relief. Judge Byrne and her court reporter then caused the important hearing transcript to disappear for two years. Much later, in the First Action in federal court, Judge Crump filed a motion for protection of *Judge Byrne's* court reporter from a deposition subpoena, who has not yet testified.

f. At least some of the Travis County civil district courts act as a unified bench. Proceedings before them are stained by *ex parte* communication in favor of one side. Whole transcripts can disappear, as in Plaintiff's case. At every hearing in Plaintiff's case (except for one visiting judge), each

judge at first requested to avoid having the court reporter make a record. It was always necessary for Plaintiff to demand it.

28. In addition to the above, it must be said that Defendant Judge Crump acted so incautiously as to give the appearance of knowing she was protected by the intermediate court.

29. Defendants' actions are not isolated to this case. They are part of a pattern complained of locally by other lawyers. National commentators have documented and condemned similar examples of adulterating judicial documents with materially false or misleading statements of fact because they are so hard to remediate.

30. Defendants' wrongful conduct lies outside their jurisdiction or discretion. Their conduct is not the result of legal mistake, incompetence, or impairment, but is knowing malfeasance. Because the wrongful acts of Defendants were not isolated, random, or minor events, but were repeated and egregious, they demonstrate the necessity for the prospective relief requested here.

31. *Declaratory Relief Previously Unavailable*. Plaintiff seeks a declaratory decree. But Plaintiff is also entitled to injunction because a declaratory decree was unavailable, and remains unavailable, in the state court action. This so because Defendants herein were not parties in the state court action; they were the adjudicators of that action and thus could not be made parties. None of the claims or counterclaims in the state court action concerned conduct by Defendants here.

Even if a declaratory decree had been available procedurally—which it was not—Plaintiff could not possibly have anticipated Defendants' due process violations until after they had occurred. Plaintiff is also entitled to injunction because Defendants have violated a prior declaratory decree, that is, the judicial oath.

32. *Plaintiff's Liberty Interest in Reputation Infringed*. As a direct result of Defendants' wrongful conduct—and only that conduct—Plaintiff sustained attorney disciplinary proceedings in three jurisdictions, which continued over a two-and-a-half year period. Eventually all three jurisdictions—California, New York, and the District of Columbia—after independent investigations, completely exonerated Plaintiff, and either found no wrong-doing on Plaintiff's part, or found that due process had been denied, or both. All jurisdictions eventually closed their proceedings without discipline imposed on Plaintiff.

III. Jurisdiction and Venue

33. Plaintiff brings suit pursuant to the Civil Rights Act of 1871, codified at 42 U.S.C. § 1983, and the federal Declaratory Judgment Act, codified at 28 U.S.C. §§ 2201and 2202, for violations of the Fourteenth Amendment to the United States Constitution.

34. This Court, as a Texas district court, has subject-matter jurisdiction over this law suit under the Texas Constitution, which invests it with jurisdiction over "all actions, proceedings, and remedies," because such jurisdiction is not exclusively

conferred elsewhere. Tex. Const. art. V, § 8. *See also Haywood v. Drown*, 556 U.S. 729, 731 (2009)("state as well as federal courts have jurisdiction over suits brought pursuant to 42 U.S.C. §1983, the statute that creates a remedy for violations of federal rights committed by persons acting under color of state law"); *Heckman v. Williamson County*, 369 S.W.3d 137, 144 (Tex. 2012)(noting jurisdiction over Section 1983 asserted against county and county-level judges).

35. Notwithstanding that Plaintiff reserves the right to move for a change of venue, venue is proper in Travis County because this is a suit in which the principal relief sought is an injunction against Defendants, one or more of whom are residents of and domiciled in Travis County. Tex. Civ. Prac. & Rem. Code § 65.023(a).

IV. Parties

36. Plaintiff is a resident of Travis County, Texas and a licensed attorney in Texas, California, New York, and the District of Columbia. In connection with the federal First Action, Plaintiff is a member of the bar of the Western District of Texas, the U.S. Court of Appeals for the Fifth Circuit, and the U.S. Supreme Court.

37. All Defendants are residents of Texas and one or more are residents of Travis County, Texas.

38. At all relevant times Defendants acted under color of state law and acted in their judicial capacity.

39. Defendant Judge Karin Crump at all relevant times acted and does continue to act under color of state law as the presiding judge of the 250th Civil District Court of

Travis County, a state trial court. She can be served at her published court address, 1000 Guadalupe, 4th floor, Austin, TX 78701, telephone (512) 854-9312.

40. Defendant Melissa Goodwin at all relevant times acted and does continue to act under color of state law as Justice of the Third Court of Appeals at Austin (the "Third Court"), an intermediate state court of appeal. She can be served at her published court address, 209 W 14th St, Austin, TX 78701, telephone (512) 463-1733.

41. Defendants David Puryear and Bob Pemberton at all relevant times acted under color of state law as Justices of the Third Court.

a. Defendant Puryear served as a justice through December, 2018, but was not re-elected. In his profile on the State Bar website he posts the address PO Box 227, Driftwood, TX 78619, and no telephone number. At or about the time of the filing of this Petition, Defendant Puryear identifies himself in his profile as "Senior Judge." This indicates that he is available for and eligible to serve at any time as a visiting judge in Travis County. In that role he would frequently be present in the Travis County courthouse. Before becoming a justice of the Third Court, he previously had served as a county-level judge in that courthouse.

b. Defendant Pemberton served as a justice until he voluntarily resigned in or about September or October, 2018. Justice Pemberton, according to his profile on the State Bar website, uses the honorary title "Justice" before his

name and maintains an address at 3300 Bee Caves Rd, Ste 650 # 1212, telephone 512-658-6065. His website email is bob@bobpemberton.com.

42. Defendants Puryear and Pemberton are eligible to be appointed as visiting, assigned, or appointed judicial officers of any Texas court. Both are capable of being in contact with all other judicial officers relevant to this suit, with any current, sitting members of the Third Court, and with the clerks, law clerks, and staff attorneys of the Third Court, the latter of whom remain in their positions after working closely with Defendants on the matters related to this law suit.

43. Defendants David Puryear, Melissa Goodwin, and Bob Pemberton are sometimes referred to hereinafter, collectively, as the "Panel" because they issued the relevant appellate decisions.

V. Factual Background

44. Much of the evidence in this matter is contained in the documents and record initially collected by the clerk and reporter in appellate Case No. 03-16-00131,

before Judge Crump's order to the court reporter removing critical exhibits.[5] The underlying cases in the trial court involved Cause No. D-1-GN-13-004023, which

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[5] The appellate record consists of the following:

REPORTER'S RECORDS
[vol. or supp. no.].RR:[pg. no.]

CLERK'S RECORDS

CR:[pg. no.]	refers to record filed 5-9-16 (1096 pp.)
CRSuppI:[pg. no.]	refers to that filed 5-27-16 (250 pp.)
CRSuppII:[pg. no.]	refers to that filed 6-21-16 (41 pp.)
CRSuppIII:[pg. no.]*	refers to that filed 7-8-16 (166 pp.)
CRSuppIV:[pg. no.] *	refers to that filed 7-8-16 (31 pp.)
CRSuppEx:[pg. no.]**	refers to that filed 7-21-16 (one exhibit)
CRSuppV:[pg. no.] *	refers to that filed 9-1-16 (780 pp.)
CRSuppVI:[pg. no.] **	refers to that filed 9-14-16 (77 pp.)
CRSuppVII:[pg. no.]**	refers to that filed 9-14-16 (104 pp.)

* No supplement number shown on title page.
** No title page is shown on this exhibit supplement.

REVISED REPORTER'S RECORDS
[vol. or supp. no.].RevisedRR:[pg. no.]
Defendant Crump ordered the court reporter to revise Volumes 1, 7, and 16 of the reporter's record and remove exhibits.

was consolidated with Cause No. D-1-GN-12-001270.[6] Other documents are contained in the record for appellate Case No. 03-12-00726. Some documents are contained in the First Action, federal Case No. 1:17-CV-1123.

The Counts below are examples.

Count I
Entering false statements into court records.

45. All of the foregoing is incorporated herein by reference as though pled in full.

46. Defendant Panel rendered a published opinion known as *Serafine v. Blunt et al.*, No. 03-16-00131 (Tex. App.—Austin, May 19, 2017) (the "Opinion").

A. Unlawful $10,000 Sanction Against Plaintiff without Due Process

47. Defendant Panel affirmed Defendant Judge Crump's entry of an unlawful $10,000 sanction against Plaintiff. Defendant Panel's Opinion states

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[6] Defendants in the underlying law suits are identified and referred to as follows:
"Viking Ltd." is Viking Fence Company, Ltd. d/b/a Viking Fence Co.

"Viking GP" is Viking GP, LLC, the general partner of Viking Ltd.

"Viking" is Viking Ltd. and Viking GP collectively.

"Lockhart" is Scott Lockhart and Austin Drainage and Foundation, LLC d/b/a Austin Drainage and Landscape Development.

"Blunts" refers to Alexander Blunt and Ashley Blunt.

"Chavarrias" refers to Salvatore Chavarria and Jennifer Chavarria, exclusive members/owners of Viking GP.

"Clanin" refers to James Clanin, claimed by Viking Ltd. to be its "independent contractor."

a. that there was a hearing and motion on the sanction ("At the hearing on Viking's motion for sanctions...."); and that Defendant Panel had reviewed the "entire record" and found "ample evidence to support the trial court's findings and conclusions about [Plaintiff's] the groundless claims." Op. at 14.

b. Judge Crump, in her sanctions order that she personally signed, also falsely—and willfully and in bad faith—claimed to grant "Defendant Viking Fence Company, Ltd.'s *Motion for Sanctions*." CR:857 (emphasis added). In the same order Judge Crump falsely claimed:

> *On November 10, 2015, the Court heard* Defendant Viking Fence Company, Ltd.'s ("Viking") *Motion for Sanctions* (the "Motion") against Plaintiff Mary Louise Serafine.

CR:852 (emphases added).

c. These statements by Defendants were and are false, and all Defendants knew they were false at the time they made them. In reality, there was no motion, no hearing, and no evidence that any of Plaintiff's claims against the Chavarrias were groundless, in the record or elsewhere. No party so asserted at any time. Indeed the Chavarrias were not even parties in the case during the relevant time period. Nor is there "ample evidence," or any evidence, that Defendants Puryear, Pemberton, and Goodwin could have found, as they had claimed, in the entire record.

d. What Judge Crump did was to pick a date—November 10, 2015—on which a *different* hearing occurred; then she fraudulently claimed the hearing on that date concerned her sanctions order, when it did not. Next she picked a motion—Viking's purported "Motion for Sanctions"—which actually concerned *different* events, allegations, and even parties, then fraudulently claimed that that motion concerned her purported order of sanctions, when it did not.

48. Today's technology allows word searches and searches for sentence fragments instantaneously over thousands of pages. Thus, a simple word search proves that Defendants were lying. The very words and concepts used by Defendant Judge Crump to describe her "findings" in her sanctions order *simply do not appear anywhere in the transcript* of the November 10, 2015 hearing (13.RR) or *in any hearing at any time*.

a. And those same words and concepts used by Crump to describe her sanctions "findings"*do not appear anywhere in Viking's motion* (CR:574-580), or *in any motion*, or *elsewhere in the entire record of proceedings* (outside of Plaintiff's own well-documented petition).

b. Listed below are the words and concepts Defendant Crump used in her order for sanctioning Plaintiff's allegations against the Chavarrias. Specifically, Judge Crump represented that Plaintiff's allegations about the Chavarrias were "vague"; and that Plaintiff's

allegations about their specific unlawful business practices could not be proved, such as those involving:

> "independent contractors,"
> "affiliated corporations,"
> "the corporate form,"
> "the liability shield,"
> "agency,"
> "alter ego,"
> "corporate fiction," and
> "a scheme."

c. A simple word search shows that none of the above words or concepts in quotation marks appeared in the transcript of the claimed hearing, or in Viking's motion for sanctions.

d. Moreover, the Chavarrias—alleged in the sanctions order to have been the victims of Plaintiff's "groundless" claims—had made no motion for sanctions at any time, ever. They had not even been a party to the litigation for many months.

e. There is simply no overlap between what Judge Crump claimed as grounds for her sanctions order, and either (1) Viking's motion for sanctions or (2) anything discussed at what Defendants represented in their judicial documents as the purported "hearing" of November 10th.

f. Indeed Judge Crump herself had verified at that same November 10th hearing that *that hearing was never noticed for **any** sanctions*—not even Viking's irrelevant motion itself.

g. Nor was any other date for any hearing on sanctions ever noticed by any party at any time.

h. Below are excerpts from the November 10th transcript where Judge Crump verifies for herself the lack of notice to Plaintiff of any hearing sanctions. (Long before Viking's motion was even filed, a different counsel, Mr. Peters, had noticed only claimed, statutory fee-shifting provisions, none of which succeeded.)

Transcript excerpts:

[Judge Crump is searching through some documents, looking for a notice from Mr. Otto, Viking's counsel, but doesn't find one.]

THE COURT: I'm looking. Just one moment, please.

MR. OTTO: Yes, Judge.

THE COURT: Just a second, please. Okay. Do you have, Mr. Otto, something other than Mr. Peters' notice? Do you have something?

MR. OTTO: I do not. No. []

13.RR.49.

i. At the November 10th hearing, Serafine did not testify, and the Chavarrias and their employees were not present. None of them—the supposed victims of Plaintiff's "groundless" claims—had moved for sanctions at any time.

j. At the November 10th hearing, no witnesses or argument supported any element—such as Plaintiff's alleged bad faith or that the Chavarrias

experienced harassment, or to meet the burden of overcoming the presumption that pleadings are filed in good faith.

49. Defendants assertions in their orders and opinions were willful fabrication. They willfully violated due process requirements.

50. If due process had been employed—if Plaintiff had known of Crump's allegations or had had notice of a hearing on Crump's sanctions order—Plaintiff would have supported each of her claims against the Chavarrias with her own, the Chavarrias', and their employees' testimony. This is because each of Plaintiff's claims—as Judge Crump knew at the time from Plaintiff's pleading—arose directly from Salvador Chavarria's and his employees' sworn deposition testimony.

51. Even if Plaintiff had called herself as a witness at the November 10th hearing, what would she have testified to? Without Viking's motion specifying any of the grounds that Defendant Crump later picked as justifying the sanctions, Serafine would have had to divine the grounds somehow in order to testify.

52. *The Order's Claim to Granting a "Motion" Was Sham*. It is important to note what Viking's motion for sanctions actually did allege. That is because reading the actual motion that was filed doubly shows what a sham it was that Judge Crump's order claimed to be "granting" that motion.

a. The actual motion had nothing to do with Judge Crump's order.

b. And reading it doubly shows the falsity of Defendant Panel's assertion that a "motion" had actually been made.

c. Viking's actual motion—not joined by the Chavarrias (who weren't even parties at that time)—claimed that Plaintiff engaged in "abusive litigation tactics," such as "six depositions," "numerous hearings," "211 discovery requests," "disclosure of net worth," and advanced a "pretense." CR:574-580.

d. As grounds for sanctions, these are sufficiently ludicrous to demonstrate that Viking's counsel knew in advance that they already had Judge Crump's favor. Otherwise these frivolous grounds would not be advanced. Tellingly, counsel for Viking fails to allege that they actually *produced* any discovery, which they did not; the net worth discovery was court ordered; six depositions is very few in any event; all of them were either court-ordered or un-objected-to.

e. But these allegations are the only ones of which Serafine could possibly have had any notice. They were entirely irrelevant to the order.

f. *None of these allegations appear in the sanctions order*.

g. A word search shows that none of the words in these allegations, or any synonym or similar concept, appears in the sanctions order. CR:852-857.

h. Likewise none appears anywhere in the transcript of the hearing, or in any documents presented at the hearing. 13.RR. Nothing at the hearing addressed any of these flimsy grounds.

i. So where is the claimed "motion"? Where is the claimed "hearing"? The

answer is they never occurred.

53. Judge Crump's sanctions order and Defendant Panel's affirmance was a triple fabrication: There was no hearing and no motion on Crump's sanctions order, as they claimed. And the Viking motion that she claimed to be granting contained absolutely nothing related to her actual order. Third, the hearing that she claimed she held had nothing to do with either the motion she claimed she was granting, or the sanctions order she actually issued.

54. All Defendants were fully aware that their statements in judicial documents were false.

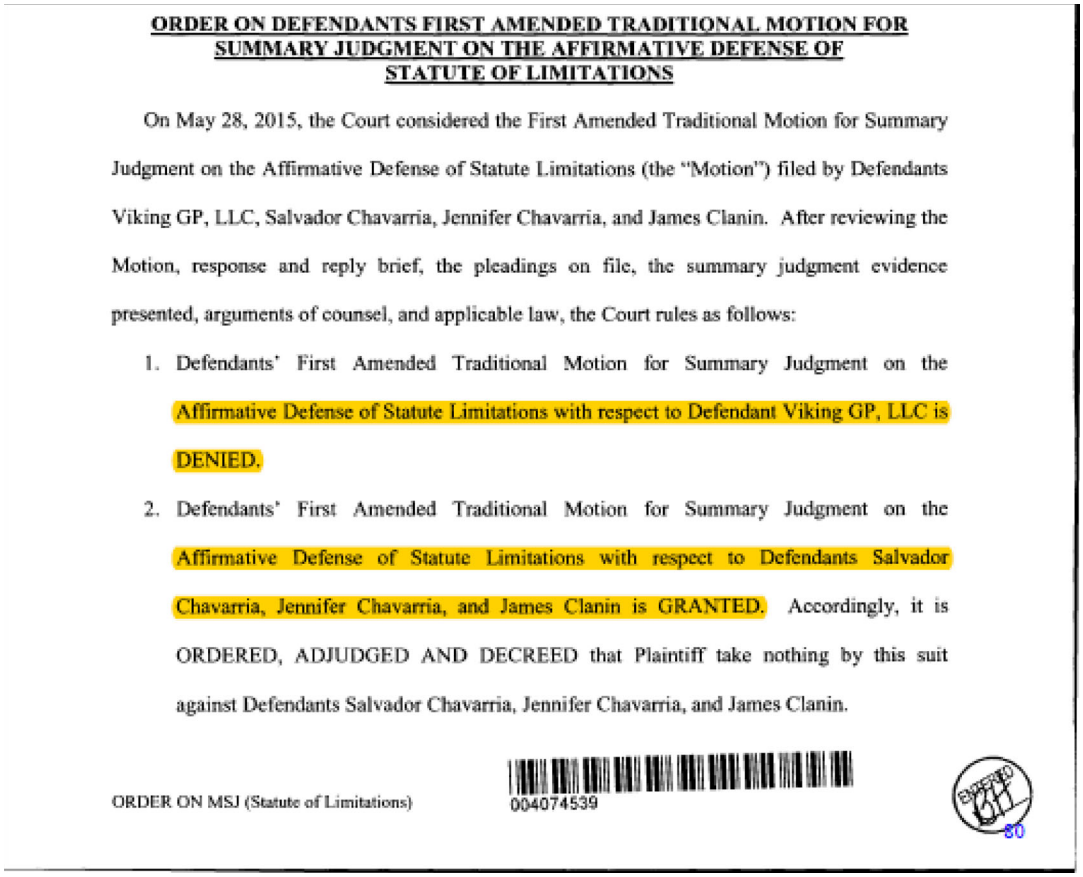
B. Misleading Statements that "Claims" Were Adjudicated on the Merits.

55. Defendant Panel also reported in their Opinion—falsely and willfully in bad faith —that Plaintiff's "specific claims were disposed of on summary judgment and which the trial court concluded were made in bad faith, with knowledge that they were groundless, and for the purpose of harassment." Op. at 14.

a. Defendant Panel's statement was made in bad faith because they knew that, in reality, the Chavarrias (and their Viking GP entity) had filed only an MSJ on their procedural affirmative defense of statute of limitations; they never moved to dismiss a single "claim" on its merits. The record was clear on this.

b. In fact the same claim that Plaintiff was sanctioned for making against the Chavarrias went forward against their entity Viking GP ! Here is

Judge Crump's summary judgment order, which shows this clearly:



ORDER ON DEFENDANTS FIRST AMENDED TRADITIONAL MOTION FOR SUMMARY JUDGMENT ON THE AFFIRMATIVE DEFENSE OF STATUTE OF LIMITATIONS

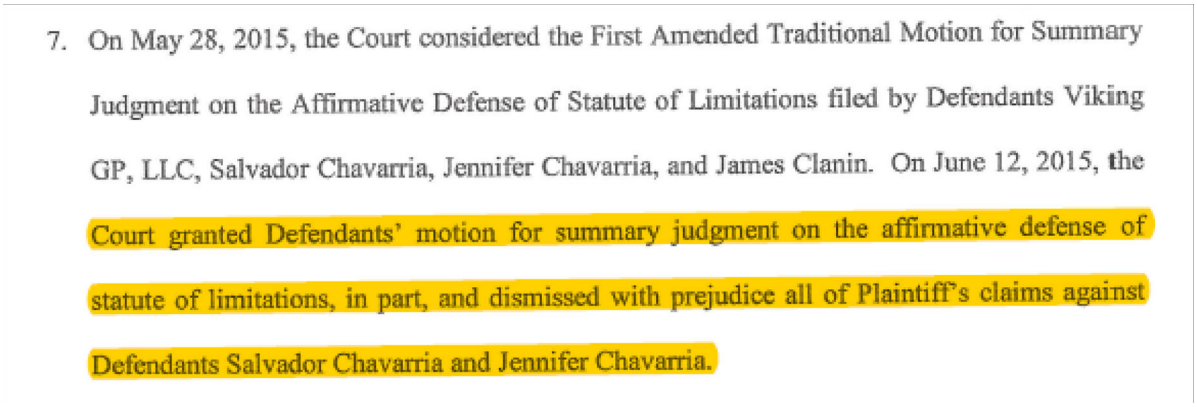
On May 28, 2015, the Court considered the First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute Limitations (the "Motion") filed by Defendants Viking GP, LLC, Salvador Chavarria, Jennifer Chavarria, and James Clanin. After reviewing the Motion, response and reply brief, the pleadings on file, the summary judgment evidence presented, arguments of counsel, and applicable law, the Court rules as follows:

1. Defendants' First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute Limitations with respect to Defendant Viking GP, LLC is DENIED.
2. Defendants' First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute Limitations with respect to Defendants Salvador Chavarria, Jennifer Chavarria, and James Clanin is GRANTED. Accordingly, it is ORDERED, ADJUDGED AND DECREED that Plaintiff take nothing by this suit against Defendants Salvador Chavarria, Jennifer Chavarria, and James Clanin.

ORDER ON MSJ (Statute of Limitations) 004074539 80

CR:80-81.

c. Nothing above speaks to any "claims." Yet Defendant Crump, in her later sanctions order, states that the MSJ on statute-of-limitations grounds was granted only "in part" and thus that Plaintiff's "claims" were "dismissed with prejudice." Here is where she writes that into her order:



7. On May 28, 2015, the Court considered the First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute of Limitations filed by Defendants Viking GP, LLC, Salvador Chavarria, Jennifer Chavarria, and James Clanin. On June 12, 2015, the Court granted Defendants' motion for summary judgment on the affirmative defense of statute of limitations, in part, and dismissed with prejudice all of Plaintiff's claims against Defendants Salvador Chavarria and Jennifer Chavarria.

CR:852-857.

d. This is intentionally misleading because, in reality, none of Plaintiff's claims against those parties was dismissed on the merits. And what is an SOL dismissal "in part"? There is no such thing.

56. Defendant Panel knowingly and in bad faith reported the identical falsehoods in their Opinion. Op. at 14.

C. False and Misleading Statements Concerning Plaintiff's Formal Bill of Exceptions

57. All Defendants willfully made false statements in order to deny Plaintiff the right to employ several formal bills of exception in her appeal before Defendant Panel.

a. The formal bill of exceptions provided by Texas Rule of Appellate Procedure 33.2 provides a method of placing into the appellate record documents and testimony excluded by the trial court. The purpose of this is to allow due process—so that a party can take a meaningful appeal and show the appellate court what evidence was excluded.

b. Plaintiff and her counsel verified and timely filed nine formal bills of exception covering Defendant Judge Crump's exclusion at trial of any rebuttal by Plaintiff, most exhibits, all damages testimony by Plaintiff, and other rulings to be appealed.

c. Defendant Panel, in a footnote, stated in its Opinion:

> While Serafine filed a formal bill of exceptions several months after trial attempting to make an offer of proof, the trial court refused her bill of exceptions, and Serafine does not appeal such refusal. See Tex. R. App. P. 33.2. Therefore, her bill of exceptions and its offer of proof contained therein present nothing for our review. [citation omitted]

Op. at 19, n. 8.

d. This statement was materially false and misleading, in bad faith. In reality, Plaintiff had twice properly appealed the denial of the bills of exception by motion, as case law provides for this specific matter—the second motion alternatively speaking as a mandamus petition. Plaintiff's opponents fully joined issue. Literally hundreds of pages of briefing ensued. Defendant Panel then denied or dismissed both of Plaintiff's motions or the petition in writing, but with no opinion.

e. Defendant Panel knew or had to know its statement in footnote 8 was false. By encasing the statement in a footnote, Defendant Panel additionally minimized the issue. The decision is at odds with other Texas courts.

f. This decision by Defendant Panel effected a denial of the right to appeal the sham trial. It also automatically placed into the record Defendant Crump's

alternative "Judge's Bill of Exceptions" (signed 7/28/2016), which—without arguing here its many legal errors—also imported Crump's many willfully false and bad-faith statements into the record. Most tellingly, Defendant Crump's "Judge's Bill" unlawfully ***eliminated all of the evidence from the formal bills***, thus impairing appeal and further denying due process.

g. *One Example*: Defendant Crump's "Judge's Bill" claimed that

"Serafine requested to offer the entirety of Plaintiffs Exhibit 106 (a 280-page document) into the record for no specific purpose."

In reality, as the transcript shows, Plaintiff's counsel Mr. Bass offered the exhibit for the purpose of the bill of exception or offer of proof, and then and there Defendant Crump approved it for that purpose. Thus, Defendant Crump's statement in her signed Judge's Bill was willfully, knowingly false, and in bad faith.

h. Indeed, before she signed her Judge's Bill, Judge Crump was explicitly reminded that she had already approved it and was provided with the transcript citation to where she had done so. Thus, when her Judge's Bill later reneged on that approval—which was without explanation or justification—she reneged fraudulently and in bad faith.

i. *Another Example*: In July 2016 Defendant Judge Crump signed an order claiming that she had filed in the clerk's record all of her written orders that

should have been filed. In reality, Defendant Crump knew and had to have know that she refused to file the critically important pretrial evidentiary order. Indeed Judge Crump simply ignored multiple motions by Plaintiff attempting to have the order filed. *See* CR:940-1036, CR:1037-1048.

j. Two justices of Defendant Panel—who knew or should have known that the order was critical to Plaintiff's appeal—later dismissed in a written order Plaintiff's motion to place the order in the appellate record.

58. Defendants followed a pattern and practice of denial of due process and right to appeal by knowingly making false statements in judicial documents. As stated above, the foregoing are some, not all, of the examples that actually occurred.

Count II
Denials of mandatory or statutory hearings.

59. All of the foregoing is incorporated herein by reference as though pled in full.

60. Defendant Panel ratified or refused to review many denials of the opportunity to be heard and the denial of due process, by relying on various pretexts and false statements.

a. *One Example*. Defendant Panel held that Plaintiff "waived" the lack of a hearing on the boundary by not attempting to present evidence about the boundary. But Defendant Panel knew that Plaintiff had made such attempt and that Defendant Crump explicitly rejected it, saying she would take no evidence. Defendant Panel also knew that this denial was not

ameliorated—even if legally it could have been, which it couldn't—by Crump's announcement of a 10-day deadline to submit affidavits and briefing, because she reneged on that deadline and ruled only 72 hours after her announcement.

61. Defendant Panel had full knowledge of this and other examples of Judge Crump's refusal of hearings, but affirmed the denials on various pretexts. They thereby signaled to all trial courts their high tolerance for disregard of the opportunity to be heard.

62. *Repeated Denials of Hearings*. Defendant Judge Crump consistently deprived Plaintiff of hearings—and in every single case, ruled against Plaintiff and for the other side.

a. ***Here are five examples*** of where Judge Crump was required to hold hearings, knew she was required to do so, and adamantly refused to do so.

i. before entering against Plaintiff the large money sanction described above;

ii. before entering an order of evidentiary sanction that ordered Plaintiff's counsel not even *to offer* exhibits, thereby excluding most of Plaintiff's trial exhibits.

iii. before ordering the expungement of Plaintiff's *lis pendens* notice, where the law requires 21-days notice and a written motion before the hearing;

iv. before the setting of the boundary, where Crump herself had promised a hearing and then reneged;

v. before initially refusing Plaintiff's formal bills of exceptions, where, again, Crump ordered the parties to submit dates for the hearing—showing she was well aware of the requirement—but without waiting for dates or holding any hearing—filed her order denying all of Plaintiff's bills.

63. In each of these cases Plaintiff and her counsel filed proper motions that brought the violation of the requirement to Crump's attention. She ignored every one.

64. Let's pause to elaborate on Crump's order that Plaintiff's counsel at trial could not even *offer* her exhibits: As a result, Plaintiff's counsel Mr. Bass scrambled to use the other side's exhibits—an un-heard-of disadvantage. So when the jury retired for deliberation, they carried back with them two huge binders of the other sides' exhibits. And a small, thin pile of a few loose pages for the Plaintiff.

65. Defendant Panel's affirmances of these repeated denials of due process were pretextual and a sham.

Count III
Additional Denials of Due Process

A. Refusals to Rule

66. All of the foregoing is incorporated herein by reference as though pled in full.

67. Repeated, intentional refusals to rule are contrary to due process and a violation of the constitutional right to petition in open courts. All Defendants repeatedly and

willfully refused to rule on properly-presented motions and arguments.

a. *One Example*. Defendant Panel refused to rule on the briefed and even undisputed fact that none of the "findings" that Crump claimed in support of her $10,000 sanction against Plaintiff was actually sanctionable conduct.

   i. The conduct in question is not sanctionable in Texas, not sanctionable in any other state, and not sanctionable in any federal jurisdictions. Defendant Panel—experienced appellate justices—were well aware that no American law anywhere sanctions the conduct for which Crump sanctioned Plaintiff. So Defendants simply refused to rule on the issue entirely.

b. *Another Example from Defendant Panel*. In the same appeal (Case No. 03-16-00131), Plaintiff filed a proper, timely motion to supplement the record with the related appellate record in Case No. 03-12-00726-CV. The latter record was already at the appellate court and contained certified documents central to the appeal. Defendant Panel simply refused to rule on the motion.

   i. They therefore forced Plaintiff to brief without any of the prior documents. The motion was not lost or misplaced; Defendant Panel were well aware of it. Ultimately they dismissed the motion as "moot." (Notice of May 19, 2017, Case No. 03-16-00131).

c. ***Four More Examples*** *from Judge Crump*. Defendant Judge Crump was

required to but refused to rule

i. on Plaintiff's written objections to trial evidence;

ii. on Plaintiff's motion to set the promised hearing on the boundary;

iii. on Plaintiff's motion to vacate Defendant Crump's unlawful expungement of *lis pendens* without the statutory hearing, 20-day notice, or motion required by Prop. Code 12.0071(d). CR:838-851.

(1) Defendant Judge Crump even ordered the Blunts to file a response to the latter motion, which they did. CR:858-61.

iv. Plaintiff then formally sought a ruling on the motion. CR:1032-1036. Defendant Crump ignored that filing too.

d. <u>*Another Example from Defendant Panel*</u>: Plaintiff was entitled by law to an expedited and accelerated appeal—in Case No. 03-12-00726-CV—of the initial denial in the trial court of Plaintiff's motion to dismiss under Civ. Prac. & Rem. Code Chapter 27. An expedited and accelerated appeal means that the time period between the close of briefing and receipt of the appellate court's opinion is only a matter of weeks, or possibly months. But Defendants Puryear and Pemberton (along with Justice Rose) simply refused to rule for more than two years, delaying the entire underlying case. The briefing was completed by April 22, 2013. Defendants did not rule until May 1, 2015.

68. Even if there were some discretion for judges not to rule at times, Defendants'

conduct was outside the bounds. There is no discretion to refuse to rule virtually always on critical matters to one party's detriment—as was the case here, always to Plaintiff's detriment.

B. Intentionally Inducing Detrimental Reliance in One Party by False Promises

69. All of the foregoing is incorporated herein by reference as though pled in full.

70. Judge Crump repeatedly induced detrimental reliance by Plaintiff and her counsel. Crump's actions were willful, knowing, and deliberately fraudulent, with the aim of placing only Plaintiff and her counsel at extreme disadvantage. The other parties did not need to worry about reneged deadlines, for example, because all the major rulings were in their favor, regardless of whether there was evidence or briefing.

a. *An Example*: At the hearing on November 10, 2015 Defendant Judge Crump announced a 10-day window for submitting to her the parties' briefing, evidence, affidavits, and proposed judgments on the ultimate and highly contentious issue of the boundary. But after announcing the 10-day deadline for evidence and briefing, Judge Crump secretly reneged completely. Within only 72 hours of the announcement—and a full week before the deadline—she issued an order that re-drew Plaintiff's boundary so as to deny access to the driveway of this home in a dense, urban neighborhood. At the same time, she issued a second order expunging the protection—without the statutory motion, hearing, and 21-day notice—of

the protective *lis pendens, before appeal could be taken*.

i. Having already announced at the November 10th hearing that she would take no evidence—and that she had already made her decision without evidence or hearing anyway—Judge Crump's announcement of at least 10 days to submit, as she said, "briefing," "evidence," "affidavits," and a "proposed final judgment"—caused Plaintiff and her counsel to refrain from further objection or possibly taking mandamus.

ii. Because Judge Crump announced this 10-day deadline at the hearing on November 10th, it yielded a deadline of November 20, 2015.

iii. Below are excerpts from the court reporter's transcript for that hearing (emphases and brackets added), where Judge Crump confirmed the November 20th deadline at least five separate times while reiterating that the deadline was for "briefing," "evidence," "affidavits," and a "proposed final judgment":

THE COURT: This...briefing will be all that I will consider, the briefing provided to the Court on or before **November the -- the 20th.** So if you are seeking something that requires evidence, then you'll need to submit it by affidavit. 13.RR:51

THE COURT: You should certainly send your proposed judgment to me on or before **November 20th**. Can everyone get your proposed final judgment to me by **November 20th**? 13.RR:77 [Parties answer yes.]

THE COURT: [Referring to]...the final judgment, the full terms of which the Court has not yet determined but will after receiving everyone's proposed final judgment on or before **November 20th**, which is the same deadline for any final pleadings, arguments, pertaining to the sanctions or attorneys' fees issues. Okay. **So everything's got to be to me on or before the 20th**. 13.RR:79-80

iv. Judges know what they are doing when they are on the record. Judge Crump had already opened the hearing by announcing she had already made her decision on the boundary. Then in the same hearing she rejected Plaintiff's attempt to offer photographic evidence. Then in the above passage she carefully gives the appearance of self-correction: She now claims (13.RR:79-80) that she hasn't yet decided the "full terms" of her order. But she "will after receiving everyone's proposed final judgment on or before November 20th...."

v. The appearance worked. Plaintiff and her counsel acceded to the tight deadline, quieted further objection, and refrained from seeking a remedy such as mandamus.

vi. With that groundwork, after only 72 hours had passed, Judge Crump entered a pair of final orders that transferred Plaintiff's real property to defendants in that case and cancelled the protection from sale provided by Plaintiff's *lis pendens* notice.

vii. There is reason to believe Judge Crump's orders were the subject of *ex parte* communication with Plaintiff's opponents, judging by the phrasing of the orders.

viii. Here are snapshots of Judge Crump's two orders, with upper-right filing dates at that precede her announced deadline of November 20, 2015 by a full week:

COPY

Filed in The District Court
of Travis County, Texas
NOV 13 2015
At 3:37 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-12-001270

MARY LOUISE SERAFINE Plaintiff, V. ALEXANDER BLUNT, ASHLEY BLUNT, SCOTT LOCKHART dba AUSTIN DRAINAGE AND FOUNDATION, LLC, VIKING FENCE COMPANY, LTD., and VIKING GP, LLC, Defendants.	§ § § § § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 200th JUDICIAL DISTRICT

ORDER DECLARING BOUNDARY

COPY

Filed in The District Court
of Travis County, Texas
NOV 13 2015
At 3:44 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-12-001270

MARY LOUISE SERAFINE Plaintiff, V. ALEXANDER BLUNT, ASHLEY BLUNT, SCOTT LOCKHART dba AUSTIN DRAINAGE AND FOUNDATION, LLC, VIKING FENCE COMPANY, LTD., and VIKING GP, LLC, Defendants.	§ § § § § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 200th JUDICIAL DISTRICT

ORDER EXPUNGING NOTICE OF LIS PENDENS

ix. No party had served or filed any briefing, evidence, affidavits, or proposed judgments, but Judge Crump's orders were then entered into property records almost immediately.

x. Judge Crump's conduct was doubly unlawful because, with the deadline still a week away, she knowingly, intentionally, and in bad faith ignored all statutory due process protections for cancellation of a *lis pendens* notice—the 21-day notice, hearing, and written motion.

71. *All Proper Requests for Relief Rejected*. Multiple subsequent filings by Plaintiff seeking to remedy these rulings were ignored by Judge Crump. Also Plaintiff's proper motions seeking rulings from Judge Crump were ignored, as were written objections.

72. As a matter of due process and fundamental fairness, Plaintiff was entitled to rely on court-announced deadlines, as well as statutory notice and hearing provisions, in order to present evidence and briefing. Plaintiff was entitled to a bona fide appeal. Defendants knowingly and intentionally disregarded due process.

73. *Another Example*: Plaintiff promptly filed a motion to vacate the expungement of the *lis pendens* notice that lacked the statutory 21-day notice, motion, and hearing. After receiving Plaintiff's motion, Judge Crump announced a briefing deadline for defendants to respond, triggering another deadline for Plaintiff to reply.

a. Again, this caused Plaintiff and her counsel to refrain from taking further

steps.

b. But without waiting for the deadline, Judge Crump re-affirmed her own expungement order by incorporating it into final judgment and immediately entering the judgment—before the briefing deadline had passed.

c. Judge Crump ignored Plaintiff's subsequent motion to reconsider.

d. On appeal, Defendants Puryear, Goodwin, and Pemberton effectively reported facts that did not occur. Then they declared that Plaintiff had somehow "waived" the statutory due process protections—the 21-day notice, motion, and hearing.

74. *Another example*. Near the end of trial Defendant Crump induced Plaintiff and her counsel to agree to submitting the undetermined boundary question, effectively, to a bench trial before her by promising there would be a hearing on the matter.

a. The jury had not determined any boundary; there was no question before them on that issue and nothing in the jury charge that addressed it.

b. In at later email, Defendant Crump—albeit with vague language—confirmed she would "determine" the question somehow at the fee-shifting hearing on November 10th, 2015.

c. She had already tipped off Plaintiff's opponents not to present any written motions for any of their fee-shifting claims. So, they also failed to present anything related to the boundary.

d. With no motion, no briefing, no argument, no claim, and no pleading by

Plaintiff's opponents for any particular boundary, Plaintiff would have had to divine the claimed boundary somehow in order to oppose it.

e. In reality, Defendant Crump did not "hear" the boundary question within any conceivable meaning of that word.

f. That is, at the start of the November 10th hearing, Judge Crump announced she had already decided the boundary in any event. Thus, any later pretense that Judge Crump remained open to changing her mind was just that—pretense. This is shown by her rejection of Plaintiff's attempt to offer her photographic evidence in favor of maintaining her property's original boundary, platted in 1891. She grudgingly allowed "five minutes"—an impossibly short time—for Serafine to make an argument. But this was pretextual, as was her claim to offer a ten-day window until November 20th to submit evidence and briefing. As shown above, she reneged on this by quickly entering orders long before the deadline passed.

g. As shown above, her orders to remove part of Plaintiff's driveway and also expunged the *lis pendens* notice.

h. No one could mistake this for a fair tribunal.

75. Defendants Puryear, Goodwin, and Pemberton denied any appeal of these issues, which were fully briefed before them.

76. <u>*Another Example—Reneging on Rebuttal*</u>. During trial Defendant Judge Crump clearly ruled that Plaintiff's counsel would be allowed to call for Plaintiff's

testimony in rebuttal, after the underlying defendants had rested. Thus, Mr. Bass went ahead with his case in chief and reserved time for rebuttal. Later, Defendant Crump reneged completely, as though her prior ruling did not exist. Plaintiff had no opportunity to rebut the opposing parties' evidence at all. Judge Crump held, in effect, that Plaintiff should have divined what the opposing parties were going to put on, and then rebutted it in her case in chief—before the jury had even heard the other sides' evidence. Judge Crump had no genuine legal justification for the denial of rebuttal. She later sought to prevent appeal of the issue in her ruling that eliminated Plaintiff's bill of exception on the issue. Defendant Panel affirmed on pretextual grounds.

77. *Examples of Reneged Deadlines by Defendant Panel*. One or more of Defendant Panel granted a 30-day extension of time for Plaintiff to file her Appellant's Brief. But then they reneged. Instead, they or their clerks accelerated the deadline on the public docket. Later they gave only delayed notice of having accelerated the deadline. Far outside local practice, they then by letter informed Plaintiff there was no recourse for the decision. While at first blush this looks like something that should be shrugged off, it is bizarre conduct for this court. Similarly, after the Third Court's clerk had informed Plaintiff that the typical 40 days would be allowed before the mandate issued (this allows time for a motion to stay the mandate). Instead, one or more of Defendant Panel, then suddenly issued the mandate the very next day. These acts were intended to and did prejudice

Plaintiff.

C. Denial of <u>Stare Decisis</u>

78. All of the foregoing is incorporated herein by reference as though pled in full.

79. Plaintiff is entitled to have the actual rules and laws, including judicial precedent, applied to the facts of her case. All Defendants, on every major procedural and substantive issue, deprived Plaintiff of the application of clear, obvious, undisputed rules and precedents of Texas law.

80. Their conduct shows that without the relief requested here, Defendants will continue to deprive Plaintiff of the right to *stare decisis*.

81. <u>*An Example*</u>. Contrary to every court in the history of Texas—and every court in any other American grazing state—Defendants here determined that fence laws pertaining to the corralling of herds of cattle applied to Plaintiff's urban, residential, backyard boundary fence. There was no evidence whatsoever that Plaintiff's fence was ever used as a grazing fence. No herd of grazing animals of any species is known to have been near *any* fence in Plaintiff's urban, small-lot subdivision since 1891, when Austin, under its charter as a Texas city, platted this subdivision.

82. <u>*Another Example*</u>. Defendant Panel employed a waiver doctrine unknown to Texas law.

83. <u>*Other Examples*</u>. Defendant Panel affirmed and collaborated in Judge Crump's unlawful conduct, described in the foregoing paragraphs, contrary to clear Texas

Supreme Court precedent and the persuasive precedent of other Texas appellate courts.

VI. Closing Allegations

A. Conditions Precedent

84. All of the foregoing is incorporated herein by reference as though pled in full.

85. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

B. Objection to Associate Judge

86. Plaintiff objects to this case being referred to an associate judge for hearing a trial on the merits or presiding at a jury trial.

VII. Prayer

Plaintiff prays that the Court will:

1. Render such findings of fact and conclusions of law as to establish the need to award Plaintiff the declaratory or injunctive relief, or both, pursuant to Section 1983, that will secure for Plaintiff, and others similarly situated, their rights under the Fourteenth Amendment of the U.S. Constitution.

2. In service thereof, Plaintiff prays for findings that all Defendants execute and did execute a policy, practice, or custom of denying due process, or affirming denials of due process, such as denying meaningful notice, hearing, and appeal; entering into the record judicial documents containing false statements of fact and bad faith rulings, made intentionally; tampering with the record; engaging

in *ex parte* communication; and other conduct in denial of due process according to proof.

3. Issue accordingly a prospective declaratory decree that sets forth that Plaintiff is entitled in future proceedings to specific due process rights. Plaintiff, for example, is entitled to be free of *ex parte* communication and *ex parte* proceedings; and is entitled to notice and hearings, to impartial arbiters, to present evidence, to obtain rulings, and to an accurate and complete record at her own expense.

4. Determine that such declaratory relief was previously unavailable to Plaintiff, because at all relevant times Defendants were judges, not parties, in the underlying actions, and that therefore injunctive relief is warranted.

5. Alternatively, determine that Defendants' judicial oath, as a matter of law, constitutes a declaratory decree to which Defendants consented, and that Defendants' violation of that oath entitles Plaintiff to injunctive relief.

6. Issue an injunction against Defendants and all those in concert with them, consistent with the declaratory decree.

7. Grant Plaintiff her costs and attorneys' fees to the extent allowed by law; and

8. Grant such other and further relief as the Court determines is just and proper.

Respectfully submitted,

/s/ M.L. Serafine
Mary Louise Serafine, State Bar No. 24048301
Mary Louise Serafine, Attorney & Counselor at Law

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Attorney for Plaintiff

TABLE OF EXHIBITS

No. D-1-GN-19-002601

Mary Louise Serafine,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
Lora J. Livingston, in her official capacity as Presiding Judge of the 261st/200th Civil District Court of Travis County, Texas; Karin Crump, in her individual and official capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas, and Melissa Goodwin, in her individual and official capacities as Justice of the Third Court of Appeals at Austin, Texas, and David Puryear and Bob Pemberton, in their individual capacities as former justices of the Third Court of Appeals at Austin, Texas, and in their future official capacities if any,	§	OF TRAVIS COUNTY, TEXAS
	§	
Defendants.	§	345th JUDICIAL DISTRICT

FIRST SUPPLEMENT TO PLAINTIFF'S ORIGINAL PETITION

Plaintiff Mary Louise Serafine herewith files this Supplement to her Original Petition filed on May 10, 2019.[1] The following allegations supplement and are in

[1] Some of the allegations in this Supplement were served on Defendants in July, 2019, as *Plaintiff's First Amended Complaint*, Document 20, in federal district court Case No. 1:19-cv-00641-LY. That case arose from Defendants' removal of the instant case to federal court in June, 2019, notwithstanding the federal court had earlier determined that it lacked subject matter jurisdiction. In November, 2019, determining that it still lacked jurisdiction, the federal court remanded the instant case to state court. Defendants then stayed the litigation.

addition to the allegations in the original petition. As to each of the following allegations, those in Plaintiff's Original Petition are incorporated herein by reference as though pled in full.

1. By operation of law, Judge Lora J. Livingston in her official capacity became a defendant in this case in October, 2019, upon her appointment—over Plaintiff's objection—to replace Judge Crump as the single-assignment judge of D-1-GN-12-001270 (Cause 12-1270). At the time of her appointment as the sole judge of 12-1270, Judge Livingston was already a defendant in this case as a result of federal successor-substitution rules.[2]

2. The allegations below show that Plaintiff continues to be in need of Section 1983 relief. Constitutional injury is both imminent and actively in progress. There remain significant proceedings yet to go forward in the 12-1270 case. It is just at the start of appeal; Serafine will need collection proceedings in the trial court, and Serafine is entitled to interest that was denied; a bill of review will be needed on multiple grounds stemming from the conduct of all Defendants here.

3. There is evidence that Defendants here are assisted by defendants in the 12-1270 case. Without this case being resolved, the Blunt-defendants in 12-1270 have pushed that case forward as quickly as possible, while defendants here have

[2] On October 25, 2019, the Honorable Lora J. Livingston was assigned for all purposes under Local Rule 2.6 to replace Judge Crump as the assigned judge of D-1-GN-12-1270. The instant case was in federal court at that time due to all Defendants' removal. Federal Rule of Civil Procedure 25(d) and Federal Rule of Appellate Procedure 43(a) operated automatically to substitute Judge Livingston for Judge Crump in this action, in official capacity.

thwarted and delayed the instant case. In sum, to thwart what Section 1983 would otherwise entitle Serafine to receive, relief is being delayed by dilatory tactics, while attempts are made to bring the 12-1270 case to a close. Plaintiff cannot now determine the true extent of contact, communication, or coordination between the judge-defendants here and the Blunt-defendants' new counsel in the 12-1270 case. But Blunts' counsel was a law clerk and staff attorney at the Third Court (including during one or more of Defendants' tenures there, Plaintiff believes); and recently Blunts' counsel has given CLE programs on the anti-SLAPP statute with Defendant Pemberton. Thus, there is communication of some frequency. Blunts' counsel also follows the filings in this case, reporting on the progress of them directly to the Third Court. Conduct by the Blunts and their counsel rises to the level of conduct by "private-party state actors" under Section 1983, but they have not been added to this suit.

4. To further increase delay in this case, defendant judges filed CPRC Chapter 11 motions to declare Plaintiff a "vexatious litigant." They then took advantage of the automatic stay and have stayed the case for a year. Prior to that, Defendants had consumed an additional half-year by removing this case to federal court—*which had already spent a year determining that it lacked subject matter jurisdiction* over this case.

Defendants' continuing protection of Blunt's known perjury.

5. As alleged in the Original Petition, Defendant Crump in the 12-1270 case had knowingly allowed incorporation of perjury into the record and made rulings based on it. Perjury against Serafine went uncorrected when it occurred at trial because Judge Crump refused Serafine's counsel any chance at rebuttal. The Blunts sustained their main SLAPP counterclaim against Serafine with intentionally false testimony by Alexander Blunt—orally and in multiple sworn affidavits—sustained for three years. The Blunts also back-dated an affidavit sworn-to under a fake notary stamp. When these were brought to Judge Crump's attention, see CR:719-730, she continued to rely on testimony she knew was false. At the main hearing on the Blunts' SLAPP counterclaims and the statutory fees and sanctions due to Serafine (that she had already won at the court of appeals), Judge Crump—without an objection before her—interrupted Serafine's counsel's live interrogation of Alexander Blunt, ordered the examination to stop, and would not allow it to continue. Later, through her judge's bill of exceptions, and an order to the court reporter, Judge Crump eliminated any further trace of the evidence Serafine's counsel had sought to introduce.

6. The state-court record in 12-1270, at CR:719-730, shows that Judge Crump was fully apprised that Blunt had recanted entirely his "harassment" and "threats" counterclaims. (These are the same ones that Judge Crump sought to keep out of evidence and refused to compensate through the sanctions required by CPRC

Chapter 27.) All appellate defendants here intentionally reported falsely in their 2017 opinion that Serafine did not appeal this removal of evidence by Judge Crump. Far contrary, Serafine and two other parties joined issue on it and had filed hundreds of pages of briefing on it.

Judge Livingston continues protection of Blunt's prior and new perjuries.

7. It is important to understand that Blunt's perjuries were not merely revealed as such by evidence fo the contrary—notwithstanding that Blunt's own co-defendant, Scott Lockhart, testified that, no, Scott Lockhart and his workers were never "threatened" by Serafine. ***Instead, Blunt himself retracted entirely after three years of sustaining the fraud on the court.***

8. Blunt's perjury is central to Serafine's claim for the attorney's fees that were required to win the anti-SLAPP proceeding and the award of sanctions in Serafine's favor.

9. Although Judge Livingston replaced Judge Crump in conducting the remand and collection proceedings in 12-1270, Judge Livingston continued to protect Blunt's prior perjuries, as well as new fabrications he and his counsel placed before Judge Livingston's court. As to both the old and new Blunt fabrications, Judge Livingston, like Judge Crump, knowingly protected Blunt from testifying. She allowed the Blunts to flout subpoenas to compel their attendance at the hearing and at deposition; she made objections for them at the hearing, so that no evidence even from the 2015 depositions would be admitted. Indeed she excluded evidence

before it was even offered. (Judge Livingston acted and spoke as though she was already aware of the issue, so she determined at the outset of the hearing that she would take no evidence except *after* 2015.)

10. Judge Livingston approved of Blunt's counsel's new claim that two false affidavits resulted from innocent "typos," although counsel refused to have them corrected.

11. Just as Judge Crump had done, Judge Livingston filed false or fabricated findings of fact and conclusions of law (except for boilerplate recitations)—which were never proved, never briefed and that were without evidence or notice.

12. As of the past week before this Supplement is filed, Judge Livingston has refused to hold the statutorily-required hearing on Serafine's formal bill of exceptions. That bill would have placed at least a small part of the evidence of Blunt's counsel's additional false statements into the appellate record. Judge Livingston simply ignores the hearing requirement of Tex. R. App. P. 33.2. Serafine filed a formal objection to Judge Livingston's refusal to hold a hearing on November 24, 2020.

13. But the Third Court—where Defendant Goodwin continues to sit—had already prevented inclusion in the appellate record of the major evidence that should have been placed in the appellate record by a formal bill of exceptions. They did this by refusing to grant the common, routine extension of time that Rule 33.2 provides, when the court reporter, because of pandemic restrictions, was unable to retrieve the exhibits from the courthouse. The Texas Supreme Court's order that a court is

to extend deadlines made unworkable by the pandemic was ignored. As a result, the un-extended deadline passed on September 4, 2020 but the necessary record for it came in on November 17, 2020.

14. In other ways Judge Livingston conducted the remand of 12-1270 in the same manner as Judge Crump had originally conducted the matter.

15. For example, Judge Crump refused to hold the statutorily-mandatory hearings for expungement of *lis pendens*, and several other matters. In a comparable way, Judge Livingston refused the statutorily-mandated hearing on Serafine's formal bill of exceptions. Judge Crump determined that the centuries-old doctrine of loss of lateral support of the land somehow did not apply in Texas, and also found that independent-contractor fraud was somehow legal in Texas. In a comparable way, Judge Livingston argued—actually argued at length on the record—that Alexander Blunt was not reqired to swear truthfully to his property ownership because TCAD somehow required every deed to be filed in its putlic records. This is nonsensical legally—not only wrong, but impossible.

16. Judge Livingston likewise helped to conceal Alexander Blunt's acknowledgment at deposition that the entirety of his "threats" counterclaim against Serafine was false. His purpose was to exercise the sole defense to actual perjury—complete retraction before trial. Judge Livingston kept out all evidence of the retraction and left it out of her findings of fact.

Acting in concert with others and holding out-of-court proceedings.

17. Related to Plaintiff's standing to sue, Plaintiff has alleged that some or most of the Travis County civil district judges act jointly and act in concert, instead of acting as independent courts.

18. By their own admission, some or all of the judges conduct unrecorded proceedings among themselves. Several of them described this publicly in a CLE panel discussion for the Austin Bar Association in May, 2019. The judges conduct weekly meetings at brown-bag lunches—entirely outside of open court—to discuss the cases before all of their courts. By their own description, at these meetings the judges trade substantive determinations about the lawyers, litigants, and cases that are before them. Together they decide who the "bad actors" are, it was said. Such meetings would be unobjectionable if they were only administrative or docket management decisions. But this amounts to holding unrecorded proceedings outside of open court and is a denial of the right to be heard before a neutral tribunal.

19. Indeed, while the lawyers or litigants are appearing in front of one judge, that judge sometimes covertly discusses the case by "instant message" with another judge. These are *ex parte* communications that provide evidence outside of open court and off the record.

20. To give another example, in Cause 12-1270, Judge Meachum issued an order in which she referred to an order by Judge Sulak before he had even filed it. Judge

Meachum's order mentioning Judge Sulak's was dated March 10, 2015. CRSuppVII at 3. She mentions Judge Sulak's order that was not filed until two days later. CR:51-55. This would be impossible without communication.

21. It is long-established that the judges enter two separate sets of docket notes. One is public; the other is read only by the other judges.

22. At another Austin Bar CLE, in a panel discussion by judges' staff attorneys, one speaker described this system as follows:

> Right, because the judges have docket notes, I'm sure most if not all of you are aware of that, and judges' notes that we all have access to on every case, so judges are going to read and determine what's been heard before. They're probably not going to overrule their colleague, and they may also likely talk to the staff and the judge of that court that's already heard the issues so I'd just be careful about doing that.

23. Judge Crump described these notes at a hearing in the 12-1270 case, on July 7, 2016. *See* Transcript of 7/7/2016 at 48. And at another hearing in 12-1270 on April 27, 2015 Judge Crump declined to rule until, she said, "I'm going to talk to Judge Meachum and Judge Sulak." 6.RR:13.

24. Judge Crump also acted jointly with Judge Darlene Byrne, whose spouse (Dan Byrne) represented a defendant in 12-1270. For that reason, Judge Crump *in this case* has filed multiple motions to shield *Judge Byrne's* court reporter from

deposition.[3]

25. The collaboration and coordination among judges described above shows why Plaintiff's relief is still necessary and why Plaintiff has standing—because a change in judicial personnel in the 12-1270 case would not result in a meaningfully different arbiter. Instead, the judges all act together.

Another example of continuing collaboration

26. A hearing was held in this 2601 case, *Serafine v. Crump*, on June 14, 2019 before Judge Mauzy. It concerned Plaintiff's motion to compel two nonparty depositions—including that of Judge Byrne's court reporter who had withheld the transcript for two years. Both witnesses were represented by the same counsel as Judge Crump. None of the defendants were present at the hearing.

27. At the morning's docket call, Judge Mauzy called for announcements. Counsel for the non-parties (the same as Judge Crump's counsel) intentionally announced for *Judge Crump*, instead of for the non-parties. Apparently this was to alert Judge Mauzy that the case involved Judge Crump. Judge Mauzy promptly stood up to leave the bench, announcing that she had "to make a phone call," and would be back "in five or ten minutes." After she returned, she immediately called *Serafine v. Crump*. Colloquy on the record shows that Judge Mauzy almost certainly had

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[3] While we do not pursue details here, the reporter withheld an important transcript from Serafine, claiming it was never taken down. In reality, the reporter, Judge Byrne, Judge Meachum, and Judge Crump acted to conceal the acts of the "alter ego" defendant in 12-1270. That defendant was a client of Dan Byrne, Judge Byrne's spouse.

just spoken to Judge Crump. As a result, Judge Mauzy seized upon Judge Crump's particular view of the discovery issue at hand, without having yet heard from Serafine's opposing counsel.

28. The hearing before Judge Mauzy was only 15 minutes on the short docket. The sole question before her was whether to grant or deny Plaintiff's motion to compel the two depositions, nothing more. But instead, Judge Mauzy struggled to go beyond the mere denial of the motion, in written form, that the parties approved as to form at the hearing. Instead, Judge Mauzy sought to rule that the depositions were affirmatively prevented in the future. Thus, despite that the order was approved as to form at the hearing, Judge Mauzy, seven hours after the hearing, filed the following. This is a photographic reproduction:

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL NON-PARTY DEPOSITIONS

Before the Court is Non-Party Movants Response to Plaintiff's Motion to Compel Non-Party Depositions. Having reviewed and considered said Response and the applicable law, this court is of the opinion that said Motion is of merit and should be granted.

It is therefore ORDERED, ADJUDGED and DECREED that the objections are SUSTAINED.

It is further ORDERED, ADJUDGED and DECREED that the motion to compel is DENIED.

Signed this 14 day of June, 2019.

PRESIDING JUDGE

29. The order above opens with a pretense. It claims that what is "[b]efore the Court" is not ***Plaintiff's motion*** to compel (which was the only matter actually before the court), but rather ***"Non-Party Movants (sic) Response."*** Thus, she sets up her order with the fiction that what is before her for adjudication is not a motion, but a response. There is no such thing in the law as setting before the court a *response*. Here, the "response," of course, is the voice of Judges Crump and Byrne, both of whom wished to stop the depositions.

30. That Judge Mauzy intended to go beyond what was before her is made clear by use of the phrase "movants response" (intended to be "movant's response"). There is no such thing as a "movant's response." With that phrase Judge Mauzy avers that somehow the non-parties are before her as simultaneously the ***movants*** and the ones filing a ***response.*** This is not legally cognizable, but she must purport to grant some affirmative relief to the non-parties that they never requested.

31. The order closes with the granting of something that doesn't exist. In the next sentence, Judge Mauzy orders that, "Having...considered said ***Response***...this Court is of the opinion that ***said Motion*** is of merit and should be ***granted.*** (emphases added)

32. No sentence such as this is legally cognizable, except in a world of result-oriented judicial distortion. What motion? The only motion in front of Judge Mauzy—the only motion heard, noticed, or calendared—is Plaintiff's motion to compel the depositions. Clearly, Judge Mauzy does not mean to grant Plaintiff's motion,

because according to the last line "the motion to compel is DENIED." Instead, the purpose of this judicial distortion is apparent in the penultimate line where the order holds that some "objections are SUSTAINED." What "objections"? The answer is, the "objections" contained in a motion never noticed, calendared, or heard. In short, Judge Mauzy sought to go beyond denying the motion to compel, which was all she did at the hearing.

33. This is an effort that goes so far—to deny the notice and neutrality inherent in due process—that it results in an order that is not legally cognizable.

34. After too long a delay, Judge Mauzy's court reporter produced a transcript with the critical part missing—the parties' agreement as to the form of the order actually discussed at the hearing. It was entirely missing from the transcript.

These actions mirror Judge Crump's distortion of the record.

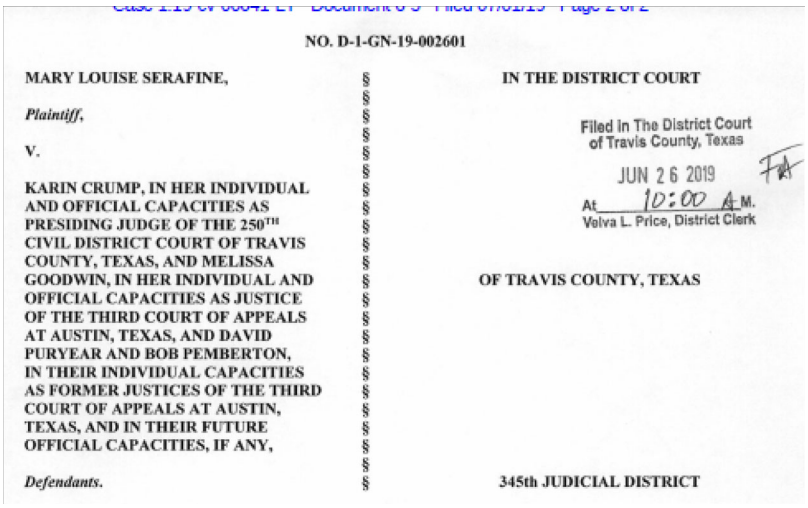
35. Judge Mauzy and Judge Livingston exercised the same pre-judgment and advocacy for the favored party as Defendants here did, taking judicial decision-making far beyond what is actually before the court.

36. Plaintiff's Original Petition alleged that Defendant Judge Crump tampered with the record in the 12-1270 case by ordering the court reporter to remove offered exhibits from the appellate record (an order the award-winning reporter said she had never before experienced); by producing nine judge's bills of exception from which all of the evidence had been eliminated; by refusal to file the order on which the parties relied at trial, and other acts.

37. In the instant case Judge Crump's conduct and that of her attorneys confirms that she continues to be unconstrained by the usual rules prohibiting fabricated evidence. There is also evidence that the clerk's office is willing to cooperate in that effort. The following examples are from Judge Crump's own exhibits filed in December, 2019 in support of her motion to declare Plaintiff a "vexatious litigant."

38. In one exhibit, in support of her mootness defense to this law suit, Judge Crump on June 26, 2019 signed an order purporting to "recuse" herself from matters involving Plaintiff.

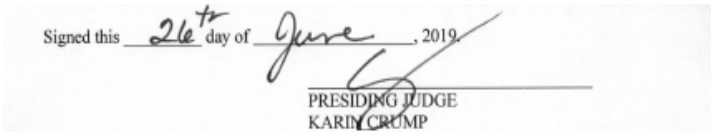
39. Here is the caption on that order:



NO. D-1-GN-19-002601

MARY LOUISE SERAFINE,	§	IN THE DISTRICT COURT
Plaintiff,	§	
V.	§	Filed in The District Court of Travis County, Texas JUN 26 2019 At 10:00 A M. Velva L. Price, District Clerk
KARIN CRUMP, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS PRESIDING JUDGE OF THE 250TH CIVIL DISTRICT COURT OF TRAVIS COUNTY, TEXAS, AND MELISSA GOODWIN, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS JUSTICE OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND DAVID PURYEAR AND BOB PEMBERTON, IN THEIR INDIVIDUAL CAPACITIES AS FORMER JUSTICES OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND IN THEIR FUTURE OFFICIAL CAPACITIES, IF ANY,	§	OF TRAVIS COUNTY, TEXAS
Defendants.	§	345th JUDICIAL DISTRICT

40. Plainly, Judge Crump signs an "order" in the *instant* case where she is obviously a defendant, not the judge in the case. Here is her signature on that page where she signs as presiding judge:



Signed this 26th day of June, 2019.

PRESIDING JUDGE
KARIN CRUMP

41. Below is a reproduction of that part of the docket sheet in 19-2601 showing that the order of 6/26/2019 followed Defendant Crump's own notice of removal by two days. The order is therefore void:

Date	Court	Party	Description	Category	Pages	
6/26/2019	345		ORD:OTHER ORDER	ORD	1	Download (/aaro/Default/GetPdf?barCodeId=6552840)
6/24/2019	345		ORD:NTC OF REMOVAL	ORD	10	Download (/aaro/Default/GetPdf?barCodeId=6548700)

42. More importantly, the order is not legally cognizable—a party signing an order as presiding judge. Despite this, Judge Crump used the order to generate purported docket entries intended to mislead. Specifically, her Exhibit 5 to her motion shows only fragments of docket sheets from 5 different cases, but not the fake order actually in the file.

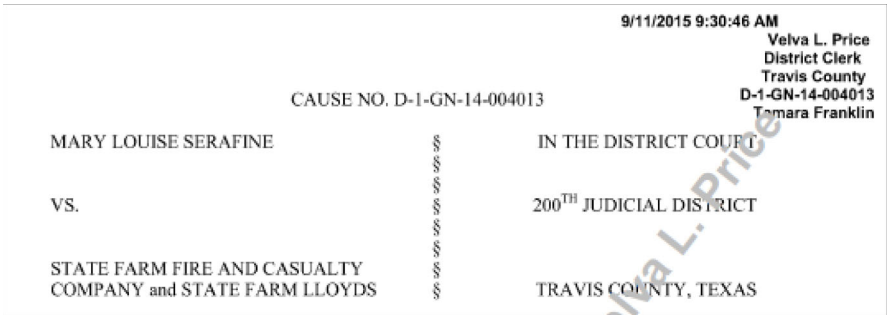
43. The docket entries purport to show the reader that an "Order of Voluntary Recusal" is in each of five files. Instead, what is actually in each file is the void, un-cognizable order under the 2601 caption bearing the judge's name as a defendant.

44. The docket entries are additionally falsified because the "order" does not belong in that file. The files are entirely different cases. But the reader does not see the "order." He sees only the fabricated docket entries. Apparently a clerk was induced not only to file the order in *this* case (where it is void, unnecessary, and uncognizable, but at least the caption matches) but also to repeatedly file the "order" in four other, entirely different cases.

45. Then, five sets of misleading docket entries were generated that read,"Order of Voluntary Recusal." Three of the entries appear to be back-dated.[4]

[4] The undersigned examined three of the dockets after the June 26, 2019 date shown on the "order." On those dockets the "orders" were not entered on the dockets until later, but were back-dated as to their date of entry.

46. For example, here is an old case that settled, and Serafine was fully represented by counsel. Below is the correct caption, which reads *Serafine v. State Farm*:

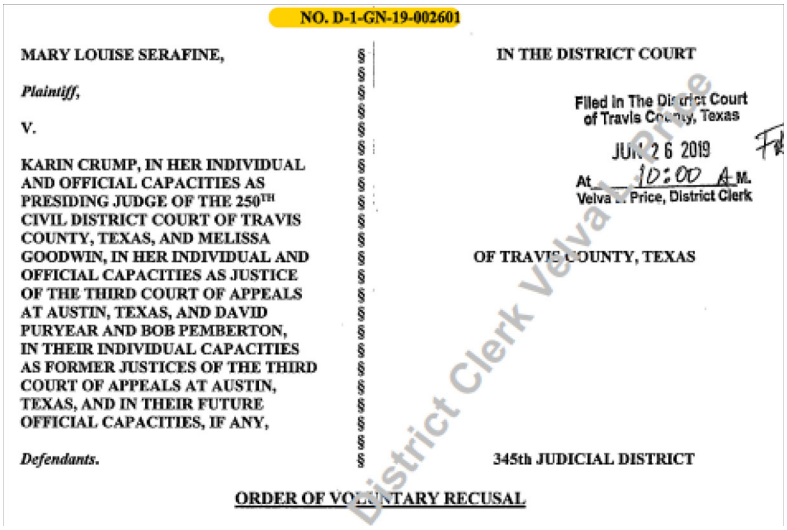


9/11/2015 9:30:46 AM
Velva L. Price
District Clerk
Travis County
D-1-GN-14-004013
Tamara Franklin

CAUSE NO. D-1-GN-14-004013

MARY LOUISE SERAFINE	§	IN THE DISTRICT COURT
	§	
	§	
VS.	§	200TH JUDICIAL DISTRICT
	§	
	§	
STATE FARM FIRE AND CASUALTY COMPANY and STATE FARM LLOYDS	§	TRAVIS COUNTY, TEXAS

Below is the "order" that Judge Crump or her attorneys caused a clerk to file in the above case. This is the 2601 caption that does not match (with Judge Crump "presiding"):

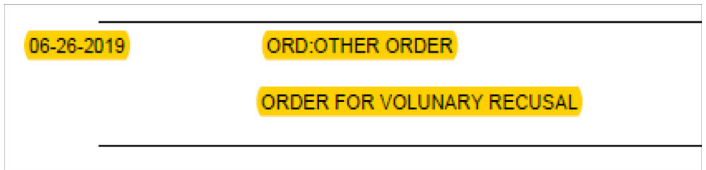


NO. D-1-GN-19-002601

MARY LOUISE SERAFINE,	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	Filed in The District Court of Travis County, Texas
V.	§	JUN 26 2019
	§	At 10:00 A M.
KARIN CRUMP, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS PRESIDING JUDGE OF THE 250TH CIVIL DISTRICT COURT OF TRAVIS COUNTY, TEXAS, AND MELISSA GOODWIN, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS JUSTICE OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND DAVID PURYEAR AND BOB PEMBERTON, IN THEIR INDIVIDUAL CAPACITIES AS FORMER JUSTICES OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND IN THEIR FUTURE OFFICIAL CAPACITIES, IF ANY,	§	Velva L. Price, District Clerk **OF TRAVIS COUNTY, TEXAS**
Defendants.	§	**345th JUDICIAL DISTRICT**

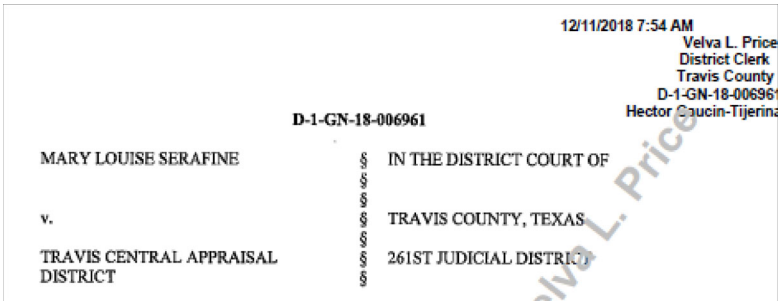
ORDER OF VOLUNTARY RECUSAL

Nevertheless, from that non-matching order, a docket entry of "recusal" is generated. The reader sees at Exhibit 5 only this docket entry—not the mis-filed document:



06-26-2019	ORD:OTHER ORDER
	ORDER FOR VOLUNARY RECUSAL

47. Likewise, here is a TCAD case arising from Serafine's property loss at the trial Judge Crump held. The caption shows correct title, parties, case number:

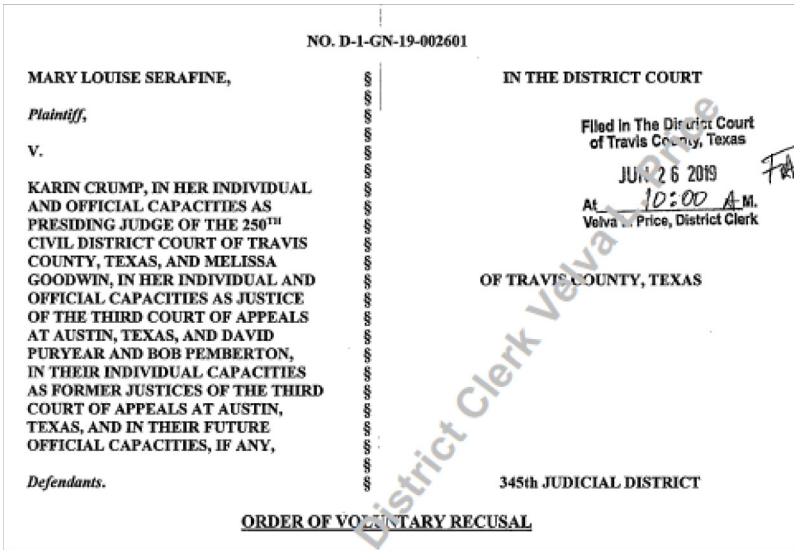


12/11/2018 7:54 AM
Velva L. Price
District Clerk
Travis County
D-1-GN-18-006961
Hector Saucin-Tijerina

D-1-GN-18-006961

MARY LOUISE SERAFINE	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TRAVIS CENTRAL APPRAISAL DISTRICT	§	261ST JUDICIAL DISTRICT
	§	

Again Judge Crump filed her "order" on the instant 2601 caption in this TCAD file:



NO. D-1-GN-19-002601

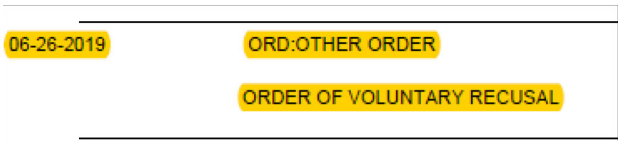
MARY LOUISE SERAFINE,	§	IN THE DISTRICT COURT
Plaintiff,	§	
V.	§	
KARIN CRUMP, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS PRESIDING JUDGE OF THE 250TH CIVIL DISTRICT COURT OF TRAVIS COUNTY, TEXAS, AND MELISSA GOODWIN, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS JUSTICE OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND DAVID PURYEAR AND BOB PEMBERTON, IN THEIR INDIVIDUAL CAPACITIES AS FORMER JUSTICES OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND IN THEIR FUTURE OFFICIAL CAPACITIES, IF ANY,	§	OF TRAVIS COUNTY, TEXAS
Defendants.	§	345th JUDICIAL DISTRICT

Filed In The District Court of Travis County, Texas
JUN 26 2019
At 10:00 A M.
Velva L. Price, District Clerk

District Clerk Velva L. Price

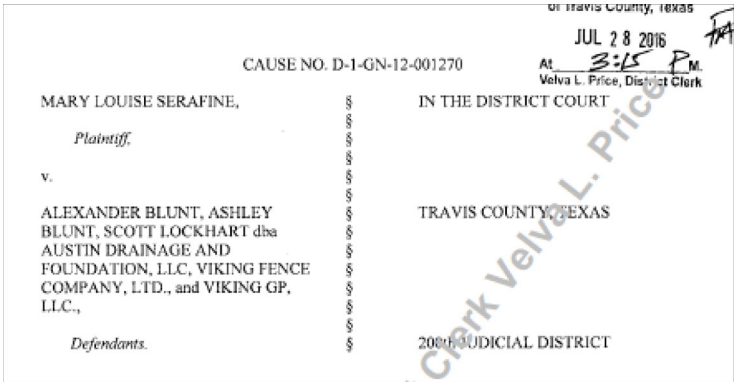
ORDER OF VOLUNTARY RECUSAL

Then a docket entry was created. Exhibit 5 shows only the docket entry claiming recusal, not the order itself:



06-26-2019	ORD:OTHER ORDER
	ORDER OF VOLUNTARY RECUSAL

48. It is the same in every case, including 12-1270. This is the correct caption:



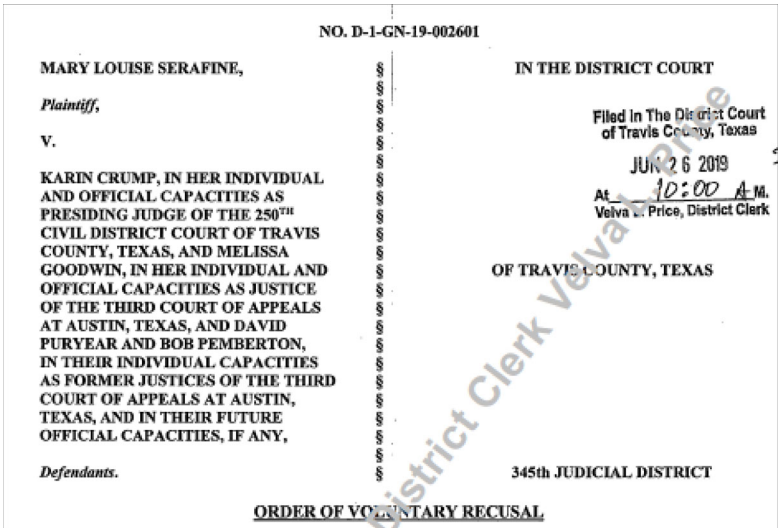
of Travis County, Texas
JUL 28 2016
At 3:15 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-12-001270

MARY LOUISE SERAFINE, *Plaintiff,*	§	IN THE DISTRICT COURT
v.	§	
ALEXANDER BLUNT, ASHLEY BLUNT, SCOTT LOCKHART dba AUSTIN DRAINAGE AND FOUNDATION, LLC, VIKING FENCE COMPANY, LTD., and VIKING GP, LLC.,	§	TRAVIS COUNTY, TEXAS
Defendants.	§	200th JUDICIAL DISTRICT

Velva L. Price District Clerk

Judge Crump again caused a clerk to file her "order" from the instant 2601 case:



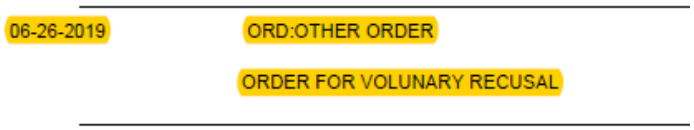
NO. D-1-GN-19-002601

MARY LOUISE SERAFINE, *Plaintiff,*	§	**IN THE DISTRICT COURT**
V.	§	Filed In The District Court of Travis County, Texas JUN 26 2019 At 10:00 A.M. Velva L. Price, District Clerk
KARIN CRUMP, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS PRESIDING JUDGE OF THE 250TH CIVIL DISTRICT COURT OF TRAVIS COUNTY, TEXAS, AND MELISSA GOODWIN, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS JUSTICE OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND DAVID PURYEAR AND BOB PEMBERTON, IN THEIR INDIVIDUAL CAPACITIES AS FORMER JUSTICES OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND IN THEIR FUTURE OFFICIAL CAPACITIES, IF ANY,	§	**OF TRAVIS COUNTY, TEXAS**
Defendants.	§	**345th JUDICIAL DISTRICT**

ORDER OF VOLUNTARY RECUSAL

District Clerk Velva L. Price

But Exhibit 5 shows the reader only the docket sheet entry of "recusal":



06-26-2019	ORD:OTHER ORDER
	ORDER FOR VOLUNARY RECUSAL

The back-dating of Judge Crump's Exhibit 2

49. In addition to being a defendant in this case, Judge Livingston was also a witness in support of Defendant Judge Crump. Judge Livingston authored the document at "Exhibit 2" in Defendant Crump's December, 2019 motion seeking dismissal of this suit by declaring Plaintiff a "vexatious litigant."

50. Exhibit 2 by Judge Livingston, contrary to well-recognized recusal procedures, sought to create the appearance that Judge Crump "recused" from the 12-1270 case, but without the usual procedure of signing an order and arranging a replacement. Clearly, Judge Crump and Judge Livingston collaborated on at least Exhibit 2, and likely other matters related to the case.

51. Judge Livingston's Exhibit 2 document, like some of the mis-filings described above, was back-dated (or "back-entered"). Initially, the letter from Judge Livingston was emailed to the parties on May 25, 2018 without any evidence that it was intended to be filed. It bore no file stamp.

52. Indeed the document did not appear on the docket even *three weeks later*. Below is a photographic reproduction of the docket taken about a month after the document was purportedly signed, on June 17, 2018. The only recent entries are the Third Court's mandate of 2/28/2018 and, above that, a defense counsel's change-of-address notice of 5/31/2018.

53. There is no 5/25 letter in between those two entries:

Date	Court	Party	Description	Category	Pages	
5/31/2018	200	DF	NTC:ATTORNEY/COUNSEL	NOTICE	2	Download (/aaro/Default/GetPdf?barCodeId=5856358)
2/28/2018	NON		ORD:MANDATE	ORD	1	Download (/aaro/Default/GetPdf?barCodeId=5720176)

54. A month later the purported "recusal" document was still not on the docket. Here is a photographic reproduction of the relevant portion of the docket taken on July 18, 2018. Almost eight weeks later, still no entry lies between those two entries.

Date	Court	Party	Description	Category	Pages	
5/31/2018	200	DF	NTC:ATTORNEY/COUNSEL	NOTICE	2	Download (/aaro/Default/GetPdf?barCodeId=5856358)
2/28/2018	NON		ORD:MANDATE	ORD	1	Download (/aaro/Default/GetPdf?barCodeId=5720176)

55. Eventually the document was filed at some unknown date and a docket entry of May 25th was inserted between the above two dates.

56. The document then bore a file-stamp that was back-dated to May 25th. But the time shown on the stamp is eight hours *before* the un-stamped document was emailed to the parties—which is highly unlikely. It could have been possible only if the document was first filed with the clerk, as the stamp shows, at 10 a.m. Then, eight hours later it was somehow sent *un-stamped* to the parties. Then, it was lost entirely for several weeks, then belatedly entered in July.

57. These allegations support that the conduct for which Plaintiff sought relief in the Original Petition is continuing. The case is in progress. Plaintiff continues to sustain harm and is in imminent danger of sustaining more of it.

Prayer

Plaintiff prays that the Court will:

1. Render such findings of fact and conclusions of law as to establish the need to award Plaintiff the declaratory or injunctive relief, or both, pursuant to Section 1983, that will secure for Plaintiff, and others similarly situated, their rights under the Fourteenth Amendment of the U.S. Constitution. Specifically, in the service thereof, Plaintiff prays the Court will make findings that all Defendants do execute and did execute a policy, practice, or custom of denying due process, or affirming denials of due process, by entering false statements into court records; making bad faith rulings; and engaging in other acts that impair the right to notice, to be heard, to have decisions made by a neutral arbiter, and impair other elements of fundamental fairness.

2. Issue accordingly a prospective declaratory decree that sets forth the specific due process rights, tailored to the proceeding and circumstances at hand, to which Plaintiff is entitled in future. Plaintiff, for example, is entitled to be free of biased "judge's notes" and all ex parte communication and ex parte proceedings, such as continue to occur at present. Plaintiff is entitled to actual notice and hearings, and to an accurate record instead of "disappearing" transcripts.

3. Determine that such declaratory relief was previously unavailable to Plaintiff, because at all relevant times Defendants were judges, not parties, in the underlying actions, and that therefore injunctive relief is warranted.

4. Alternatively, determine that Defendants' judicial oath, as a matter of law,

constitutes a declaratory decree to which Defendants consented, and that Defendants' violation of that oath entitles Plaintiff to injunctive relief.

5. Issue an injunction against Defendants and all those in concert with them, consistent with the declaratory decree, that is tailored to the proceedings at hand.

6. Grant Plaintiff her costs and attorneys' fees to the extent allowed by law; and

7. Grant such other and further relief as the Court determines is just and proper.

Respectfully submitted,

Mary Louise Serafine, State Bar No. 24048301
Mary Louise Serafine, Attorney & Counselor at Law
P.O. Box 4342, Austin, Texas 78765
Tel: 512-220-5452
Email: serafine@mlserafine.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing document has been delivered via e-service through the Court's electronic filing system on the counsel below, on this the 30th day of November, 2020.

Anthony J. Nelson, Esq.
Patrick T. Pope, Esq.
Office of David A. Escamilla
Travis County Attorney
P. O. Box 1748, Austin, Texas 78767
(512) 854-9415, (512) 854-4808 FAX
Attorneys for Defendant the Hon. Karin Crump

Courtney Corbello, Esq.
Assistant Attorney General
Law Enforcement Defense Division
Office of the Attorney General

P.O. Box 12548, Capitol Station, Austin, Texas 78711
(512) 463-2080 / Fax (512) 370-9374
Attorney for Defendants the Hon. Melissa Goodwin, the Hon. Bob Pemberton, and Hon. David Puryear.

M. L. Serafine

Mary Louise Serafine
State Bar No. 24048301

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mary Serafine on behalf of Mary Serafine
Bar No. 24048301
serafine@mlserafine.com
Envelope ID: 48481216
Status as of 12/2/2020 1:55 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Courtney Corbello	24097533	courtney.corbello@oag.texas.gov	11/30/2020 3:07:28 PM	SENT
Anthony J. Nelson	14885800	tony.nelson@traviscountytx.gov	11/30/2020 3:07:28 PM	SENT
Patrick Pope		patrick.pope@traviscountytx.gov	11/30/2020 3:07:28 PM	SENT

CAUSE NO. D-1-GN-19-002601

MARY LOUISE SERAFINE, *Plaintiff*,	§	**IN THE DISTRICT COURT**
	§	
	§	
v.	§	**345TH JUDICIAL DISTRICT**
	§	
KARIN CRUMP, et al.,	§	
Defendant.	§	**OF TRAVIS COUNTY, TEXAS**

Defendants' Joint Notice of Removal to Federal Court

To The Honorable Judge of Said Court:

Defendants Justice David Puryear, Justice Melissa Goodwin, and Justice Bob Pemberton (Defendant Justices), by and through the Office of the Texas Attorney General, and Defendant Travis County District Judge Karin Crump, by and through the Travis County Attorney, proceeding jointly, file their Notice of Removal to Federal Court of the above-styled action. In support thereof, Defendants would show the Court as follows:

Defendants assert their right to remove this action to federal court based on federal question jurisdiction. Plaintiff Mary Louise Serafine brought this civil action in state court against Defendants, who have all been served with process, and who did not answer or appear in this court. Serafine argues that her due process rights under the Fourteenth Amendment have been violated by Defendants by issuing certain holdings and opinions in the course of presiding over her a lawsuit Serafine filed against her neighbors in state court. A federal district court has original

jurisdiction over 42 U.S.C. § 1983 claims pursuant to 28 U.S.C. § 1331 and, therefore, removal of this entire lawsuit is allowed under 28 U.S.C. § 1441(b).

Defendants have filed the attached "Notice of Removal" in the United States District Court for the Western District of Texas, Austin Division. *See* "**Exhibit A.**"

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

SHANNA MOLINARE
Assistant Attorney General
Chief, Law Enforcement Defense Division

s/ *Courtney Corbello*
COURTNEY CORBELLO
Assistant Attorney General
Texas State Bar No. 24097533
Courtney.Corbello@oag.texas.gov
ATTORNEY-IN-CHARGE FOR PURYEAR, PEMBERTON AND GOODWIN

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2080 / Fax (512) 457-4654

David A. Escamilla
County Attorney, Travis County
P. O. Box 1748

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Facsimile: (512) 854-4808

/s/ *Anthony J. Nelson*
Anthony J. Nelson
State Bar No. 14885800
Tony.Nelson@traviscountytx.gov
Patrick T. Pope
State Bar No. 2407915
Patrick.Pope@traviscountytx.gov
ATTORNEYS FOR JUDGE CRUMP

NOTICE OF ELECTRONIC FILING

I, **COURTNEY CORBELLO**, Assistant Attorney General of Texas, do hereby certify that I have electronically submitted for filing a true copy of the above in accordance with the Electronic File & Serve System of Travis County, Texas on June 24, 2019.

/s/ *Courtney Corbello*
COURTNEY CORBELLO
Assistant Attorney General

CERTIFICATE OF SERVICE

I, **COURTNEY CORBELLO,** Assistant Attorney General of Texas, certify that a true copy of the foregoing has been served in accordance with the Texas Rules of Civil Procedure via electronic service on June 24, 2019, as follows:

Mary Louise Serafine
P.O. Box 4382
Austin, Texas 78765
mlserafine@gmail.com

/s/ *Courtney Corbello*
COURTNEY CORBELLO
Assistant Attorney General

Cause No. D-1-GN-19-002601

MARY LOUISE SERAFINE,	§
***Plaintiff*,**	§
	§
v.	§
	§
KARIN CRUMP, et al.,	§
Defendants.	§

Defendants' Joint Notice of Removal to Federal Court

Exhibit A

(Federal Notice of Removal)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARY LOUISE SERAFINE, ***Plaintiff,***	§	
v.	§	**Civil Case No. 1:19-CV-641**
KARIN CRUMP, et al., ***Defendant.***	§	

Defendants' Joint Notice of Removal to the United States District Court for the Western District of Texas

Defendants Justice David Puryear, Justice Melissa Goodwin, and Justice Bob Pemberton (Defendant Justices), by and through the Office of the Attorney General of the State of Texas, and Defendant Travis County District Judge Karin Crump, by and through the Travis County Attorney, proceeding jointly, file this Notice of Removal, pursuant to 28 U.S.C. § 1446(a). In support thereof, Defendants respectfully show the Court the following:

Introduction

This case contains a longer history than most for this stage of litigation. Plaintiff Mary Louise Serafine first filed suit against Judge Karin Crump in this Court on November 28, 2017. *See Serafine v. Crump, et. al*, Civil Case No. 1:17-cv-01123-LY (ECF No. 1). Serafine alleged Judge Crump acted unconstitutionally in making rulings against her in the course of presiding over a state court case Serafine brought against her neighbors. *Id.* On December 21, 2017, Serafine amended her complaint to add Justices Pemberton, Puryear and Goodwin as defendants for affirming the jury's verdict against Serafine on appeal. *Id.* at ECF No. 5. This Court

granted Defendants' respective motions to dismiss on July 30, 2018 and dismissed Serafine's suit for lack of subject matter jurisdiction. *Id*. at ECF Nos. 72-73.

After Serafine had appealed this dismissal to the Fifth Circuit and submitted an appellant's brief, but before Defendants filed their appellee briefs, Serafine re-filed her exact same suit against Defendants in the 345th Judicial District of Travis County entitled *Mary Louise Serafine v. Karin Crump, et. al*, Cause No. D-1-GN-19-002601. *See* **Exhibit A** (Serafine's Original Petition with exhibits). Serafine contacted defense counsel and demanded all defendants waive service of her complaint; when that did not occur, she then requested citations be issued and filed a motion for service of process.[1] **Exhibit B** (Serafine's citiation requests for Defendants); **Exhibit C** (Citations issued for Defendants); **Exhibit D** (Serafine's Motion for Service of Process). Defendants were thereafter served, not through counsel, but individually and personally. **Exhibit E** (Affidavits of Delivery). After attempting to serve Judge Crump while she was sitting on the bench, counsel for Judge Crump informed Serafine that Judge Crump would waive service to avoid further disturbance in her courtroom. **Exhibit F** (Rule 11 Agreement).

On June 7, 2019, before any Defendant had answered in her suit, Serafine filed a motion to compel the depositions of Judge Crump's chambers' staff, non-parties Meanette Salgado, CSR and Vasu Behara, Esq. **Exhibit G** (Motion to Compel with exhibits). Serafine scheduled a hearing on this matter for June 14, 2019. *Id*. This

[1] Serafine did not serve her motion on defense counsel claiming Defendants were unrepresented, despite having been informed by defense counsel that defendants were, indeed, their clients. *See* Ex. D pp. 4-5.

motion was not served on any defendant named in the current state court petition or the previous federal lawsuit that is pending on appeal. *See id*; *see also* **Exhibit H** (Serafine's "Business Records Affidavit" in Support of Motion to Compel). Salgado and Behara sought a protective order and moved to quash their noticed depositions on June 12, 2019. **Exhibit I** (Motion to Quash with exhibits). Salgado and Behara also filed a response to Serafine's motion to compel. **Exhibit J** (Response to Plaintiff's Motion to Compel). Serafine filed a reply in support of her motion to compel on June 13, 2019. **Exhibit K** (Serafine's Reply); *see also* **Exhibit L** (Serafine's exhibits to be used at motion to compel hearing). Serafine's motion to compel was denied on June 14, 2019. **Exhibit M**; see also **Exhibit N** (Docket Sheet for 345th District).

This action is a civil action of which this court has original jurisdiction under 28 U.S.C.A. § 1331, and is one which may be removed to this court by Defendants pursuant to the provisions of 28 U.S.C.A. § 1441(a) in that Plaintiff claims Defendants violated her rights under the Fourteenth Amendment by issuing rulings against her in her state court case. *See* Ex. A.

Grounds for Removal

This court has original jurisdiction over all civil claims arising under the Constitution and laws of the United States. 28 U.S.C. § 1331. It appears on the face of Plaintiff's complaint that this cause of action is brought under the United States Constitution. *See id*; *see also* Ex. A. Therefore, removal of this case is proper pursuant to 28 U.S.C. § 1441. *Gutierrez v. Flores*, 543 F.3d 248, 251 (5th Cir. 2008).

This Notice of Removal is timely filed. *See* 28 U.S.C. 1446(b)(1) (providing that

the notice of removal must be filed within 30 days of receipt of the initial pleading by the defendant through service). Justice Goodwin was served the earliest out of all the Defendants on June 3, 2019. Ex. E. Venue is proper in the Western District of Texas because this case was originally filed in the District Court of Travis County, Texas. 28.U.S.C. 1441(a).

There are no motions currently pending in state court. A copy of this Notice of Removal will be filed in 345th District Court of Travis County, Texas. Additionally, a copy of this Notice of Removal and all attachments will be served on Plaintiff. Defendants will file an Answer or responsive pleading within 7 days of the filing date of this Notice of Removal. *See* FED. R. CIV. P. 81(c). All process and pleadings are attached hereto, in accordance with 28 U.S.C. § 1446(a).

ACCORDINGLY, Defendants respectfully pray that this cause of action be removed to the United States District Court for the Western District of Texas, Austin Division, pursuant to 28 U.S.C. § 1441.

Respectfully submitted.

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Attorney General of Texas

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First Assistant Attorney General

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NOTICE OF ELECTRONIC FILING

I, **COURTNEY CORBELLO**, Assistant Attorney General of Texas, do hereby certify that I have electronically submitted for filing a true copy of the above in accordance with the Electronic Case Files System of the Western District of Texas on June 24, 2019.

/s/ *Courtney Corbello*
COURTNEY CORBELLO
Assistant Attorney General

CERTIFICATE OF SERVICE

I, **COURTNEY CORBELLO,** Assistant Attorney General of Texas, certify that a true copy of the foregoing has been served has been served on all counsel of record via electronic mail on June 24, 2019, as authorized by Fed. R. Civ. P. 5(b)(2) and in accordance with the electronic case filing procedures of the United States District Court for the Western District of Texas.

/s/ *Courtney Corbello*
COURTNEY CORBELLO
Assistant Attorney General

Rule 25. Substitution of Parties

(a) Death.

(1) *Substitution if the Claim Is Not Extinguished*. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) *Continuation Among the Remaining Parties*. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) *Service*. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

(b) Incompetency. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 43. Substitution of Parties

(a) Death of a Party.

(1) **After Notice of Appeal Is Filed.** If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) **Before Notice of Appeal Is Filed—Potential Appellant.** If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative—or, if there is no personal representative, the decedent's attorney of record—may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) **Before Notice of Appeal Is Filed—Potential Appellee.** If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

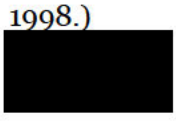
(b) Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) Public Officer: Identification; Substitution.

(1) **Identification of Party.** A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) **Automatic Substitution of Officeholder.** When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998.)



7.2. Public Officers.

Texas Court Rules

Texas Rules of Appellate Procedure

Section ONE. General Provisions

Rule 7. Substituting Parties

As amended through August 21, 2020

7.2. Public Officers

(a) *Automatic Substitution of Officer*. When a public officer is a party in an official capacity to an appeal or original proceeding, and if that person ceases to hold office before the appeal or original proceeding is finally disposed of, the public officer's successor is automatically substituted as a party if appropriate. Proceedings following substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. Substitution may be ordered at any time, but failure to order substitution of the successor does not affect the substitution.

(b) *Abatement*. If the case is an original proceeding under Rule 52, the court must abate the proceeding to allow the successor to reconsider the original party's decision. In all other cases, the suit will not abate, and the successor will be bound by the appellate court's judgment or order as if the successor were the original party.

Cite as Tex. R. App. P. 7.2

Note:
Notes and Comments

Comment to 1997 change: This is former Rule 9. Former subdivision (a) regarding death of a party in a civil case is now subparagraph 7.1(a)(1). Former subdivision (b) regarding death of a party in a criminal case is now subparagraph 7.1(a)(2). Former subdivision (c) regarding separation of office by public officers is now subdivision 7.2. Former paragraph (c)(3) regarding a successor's liability for costs is omitted as unnecessary. Former subdivision (d) regarding substitution for other causes is now paragraph 7.1(b). Subdivision 7.2 is revised to make it applicable to all cases in which a public officer is a party, and to make substitution automatic if appropriate.

42 U.S. Code § 1983. Civil action for deprivation of rights

U.S. Code | Notes

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub. L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

CIVIL PRACTICE AND REMEDIES CODE

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 11. VEXATIOUS LITIGANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.

(2) "Litigation" means a civil action commenced, maintained, or pending in any state or federal court.

(3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(4) "Moving defendant" means a defendant who moves for an order under Section 11.051 determining that a plaintiff is a vexatious litigant and requesting security.

(5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.01, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.002. APPLICABILITY. (a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) This chapter does not apply to a municipal court.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 2, eff. September 1, 2013.

SUBCHAPTER B. VEXATIOUS LITIGANTS

Sec. 11.051. MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY. In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

(1) determining that the plaintiff is a vexatious litigant; and

(2) requiring the plaintiff to furnish security.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. (a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

(1) if the motion is denied, before the 10th day after the date it is denied; or

(2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

(b) On the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.053. HEARING. (a) On receipt of a motion under Section 11.051, the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

(1) written or oral evidence; and

(2) evidence presented by witnesses or by affidavit.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:

(A) finally determined adversely to the plaintiff;

(B) permitted to remain pending at least two years without having been brought to trial or hearing; or

(C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 3, eff. September 1, 2013.

Sec. 11.055. SECURITY. (a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) The court in its discretion shall determine the date by which the security must be furnished.

(c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.056. DISMISSAL FOR FAILURE TO FURNISH SECURITY. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.057. DISMISSAL ON THE MERITS. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. PROHIBITING FILING OF NEW LITIGATION

Sec. 11.101. PREFILING ORDER; CONTEMPT. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.

(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

(d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) A prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.02, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 4, eff. September 1, 2013.

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(e) The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

(f) A decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning permission to file a

litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.03, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 5, eff. September 1, 2013.

Sec. 11.103. DUTIES OF CLERK. (a) Except as provided by Subsection (d), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(c) If the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation, the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.04, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.1035. MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 8, eff. September 1, 2013.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website a list of vexatious litigants subject to prefiling orders under Section 11.101. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a

prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.05, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 9, eff. September 1, 2013.

No. D-1-GN-19-002601

Mary Louise Serafine, Plaintiff	)(	**IN THE DISTRICT COURT**
	)(	
	)(	
v.	)(	**OF TRAVIS COUNTY, TEXAS**
	)(	
Karin Crump, et. al., Defendants	)(	**345th JUDICIAL COURT**

ORDER DENYING PLAINTIFF'S REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

Came on this the 14th day of January 2021 Plaintiff's Request for Findings of Fact and Conclusions of Law.

Findings of fact and conclusions of law are "not required because the vexatious litigant issue [is] not tried in a conventional bench trial." *Willms v. Americas Tire Co., Inc.*, 190 S.W.3d 796, 802 (Tex. App.— Dallas 2006, pet. denied). "Also, the vexatious litigant statute does not require written findings of fact and conclusions of law." *Id.*

The Court issued an oral ruling at the conclusion of the vexatious litigant hearing that was detailed and clear as to the reasons why it was granting the Defendants' motions.

THEREFORE, Plaintiff's Motion is DENIED.

Todd Blomerth

TODD A. BLOMERTH
SENIOR DISTRICT JUDGE
SITTING BY ASSIGNMENT

SIGNED THIS THE 14TH DAY OF JANUARY 2021.

No. D-1-GN-19-002601

Mary Louise Serafine,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF TRAVIS COUNTY, TEXAS
	§	
Karin Crump, et al.	§	
	§	
Defendants.	§	345th JUDICIAL DISTRICT

ORDER
ON PLAINTIFF'S OBJECTIONS TO & MOTION TO STRIKE
DEFENDANT CRUMP'S EXHIBITS 1 TO 5

On November 30, 2020, Plaintiff Mary Louise Serafine filed objections to and a motion to strike Defendant Crump's Exhibits 1 to 5 in support of Defendant's motion to declare Plaintiff a vexatious litigant. The Court rules on the objections as follows:

Exhibit 1: SUSTAINED ___ OVERRULED ✓

Exhibit 2: SUSTAINED ___ OVERRULED ✓

Exhibit 3: SUSTAINED ___ OVERRULED ✓

Exhibit 4: SUSTAINED ___ OVERRULED ✓

Exhibit 5: SUSTAINED ___ OVERRULED ✓

The Court strikes from the record each exhibit where the objection is sustained.

SIGNED on 1/14, 2021.

THE HONORABLE TODD A. BLOMERTH
PRESIDING JUDGE

No. D-1-GN-19-002601

Mary Louise Serafine,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF TRAVIS COUNTY, TEXAS
	§	
Karin Crump, et al.	§	
	§	
Defendants.	§	345th JUDICIAL DISTRICT

ORDERS

The Court has considered motions filed by Plaintiff Mary Louise Serafine and provides the following written rulings.

1. On November 16, 2020 Plaintiff filed an *Objection* to Defendant Crump's request to take judicial notice. Plaintiff's *Objection* was included within Plaintiff's motion under the Texas Citizen's Participation Act (also filed on November 16, 2020). The Court hereby rules ***only*** on Plaintiff's *Objection* to taking judicial notice.

Plaintiff's *Objection* to taking judicial notice is

_____SUSTAINED _____✓_____OVERRULED.

2. On December 15, 2020 Plaintiff filed an *Objection* to the Court's hearing of Defendants' motions to declare Plaintiff a "vexatious litigant" ***before hearing*** Plaintiff's motion to change venue (filed October 23, 2020) ***and before hearing*** Plaintiff's motion under the Texas Citizen's Participation Act (filed November

16, 2020).

Plaintiff's *Objection* is

_____SUSTAINED ____✓__OVERRULED.

3. On December 29, 2020 Plaintiff filed a *Verified Motion for Continuance* asking for a separate, second hearing on a different day to consider "Prong One" of Defendants' vexatious litigant motions under Civ. Prac. & Rem. Code § 11.054. That *Verified Motion for Continuance* was

_____GRANTED _____✓DENIED

4. On December 29, 2020, Defendant Justices filed a *Supplement to Motion to Declare Plaintiff a Vexatious Litigant*, including two exhibits. In response on the same date, Plaintiff filed an *Urgent Motion to Strike Defendant Justices' "Supplement" with Additional Exhibits or For Alternative Relief.Motion to Strike Defendant Justices' "Supplement."*

Plaintiff's *Urgent Motion to Strike* the Justices' Supplement and Exhibits was

_____GRANTED _____✓DENIED

5. On January 5, 2021—after the December 30, 2020 hearing on vexatiousness but before the Court signed its orders, Plaintiff filed a *Motion to Reduce Security* in which she asked for a reduction in bond amount to no more than $2,000 and that it be restricted to future *pro se* filings but not applicable to this case. The Court considered the motion.

Plaintiff's *Motion to Reduce Security* is

_____GRANTED _____✓DENIED

SIGNED on 1/14, 2021.

THE HONORABLE TODD A. BLOMERTH
PRESIDING JUDGE

No. D-1-GN-19-002601

Mary Louise Serafine,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
Lora Livingston, in her official capacity as Presiding Judge of the 261st/200th Civil District Court of Travis County, Texas; Karin Crump, in her individual and official capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas, and Melissa Goodwin, in her individual and official capacities as Justice of the Third Court of Appeals at Austin, Texas, and David Puryear and Bob Pemberton, in their individual capacities as former justices of the Third Court of Appeals at Austin, Texas, and in their future official capacities if any,	§	OF TRAVIS COUNTY, TEXAS
Defendants.		345th JUDICIAL DISTRICT

ORDER

CAME ON TO BE HEARD Plaintiff's Constitutional Objection to Remote, Telecommunications Hearing of Defendants' Motion to Declare Plaintiff a "Vexatious Litigant." After considering Plaintiff's objection, the response, and the arguments of counsel, the Court ~~SUSTAINS~~ OVERRULES the objection ~~and defers hearing Defendants' motions under Chapter 11, Civil Practice & Remedies Code~~.

SIGNED on 12/7, 2020

Judd Blomerth

PRESIDING JUDGE

CAUSE NO. D-1-GN-19-002601

Mary Louise Serafine, *Plaintiff,*	§	**IN THE DISTRICT COURT,**
v.	§	**345TH JUDICIAL DISTRICT**
Karin Crump, et al., *Defendant.*	§	**OF TRAVIS COUNTY, TEXAS**

ORDER ON DEFENDANT CRUMP'S MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER

Came to be heard on December 29, 2020 Defendant Judge Karin Crump's Motion to Quash Plaintiff Mary Louise Serafine's subpoena sent via email seeking to require that the Defendant Judge Crump appear, and testify at the hearing set on December 30, 2020 to declare Plaintiff Serafine a vexatious litigant. Defendant Judge Crump has also sought a protective order under Texas Code of Civil Procedure 176.6(e). The Court, having considered the Motion, the response filed by Plaintiff thereto, and the arguments of counsel at the December 29, 2020 hearing set by the Court to address this motion, finds Defendant Crump's motion meritorious and is of the opinion that the following order shall issue:

It is **ORDERED** that Defendant Crump's Motion is, in all things, **GRANTED**.

It is further **ORDERED** that Plaintiff Serafine's subpoena as to Defendant Crump was quashed and Defendant Crump is not required to appear in court to testify as to any issue arising from Defendant Crump's motion to declare Plaintiff a vexatious litigant.

It is further **ORDERED** that Defendant Crump is entitled to a protective order under Texas Code of Civil Procedure 176.6(e) as to any further subpoenas or discovery requests served on her in this suit. Said protective order will remain in place until this Court, upon its own motion or a meritorious motion by Plaintiff, orders the protective order revoked.

SIGNED on this the 14 day of January, 2021.

JUDGE PRESIDING

Order agreed to in form by:

/s/ Courtney Corbello

Courtney Corbello

Attorney for Defendant Justices

/s/ Anthony J. Nelson

Anthony J. Nelson

Attorney for Judge Crump

CAUSE NO. D-1-GN-19-002601

MARY LOUISE SERAFINE, *Plaintiff,*	§	IN THE DISTRICT COURT,
v.	§	345TH JUDICIAL DISTRICT
KARIN CRUMP, et al., *Defendant.*	§	OF TRAVIS COUNTY, TEXAS

ORDER ON DEFENDANT JUSTICES' MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER

Came to be heard the Defendant Justices' motion to quash Plaintiff Mary Louise Serafine's subpoenas sent via email seeking to require that the Defendant Justices appear, and testify at the hearing set on December 30, 2020 to declare Serafine a vexatious litigant. Defendant Justices have also sought a protective order under Texas Code of Civil Procedure 176.6(e). The Court finds the Defendant Justices' motions meritorious and is of the opinion that the following order shall issue:

It is **ORDERED** that Defendant Justices' Motion is, in all things, **GRANTED**.

It is further **ORDERED** that Plaintiff Serafine's subpoenas as to Defendant Justices are quashed and Defendant Justices are not required to appear in court to testify as to any issue arising from Defendant Justices' motion to declare Plaintiff vexatious.

It is further **ORDERED** that Defendant Justices' are entitled to a protective order under Texas Code of Civil Procedure 176.6(e) as to any further subpoenas or discovery requests served on them in this suit. Said protective order will remain in place until this Court, upon its own motion or a meritorious motion by Plaintiff, orders the protective order revoked.

SIGNED on this the 8th day of January, 2021.

JUDGE PRESIDING

CAUSE NO. D-1-GN-19-002601

MARY LOUISE SERAFINE, *Plaintiff,*	§	IN THE DISTRICT COURT,
v.	§	345TH JUDICIAL DISTRICT
KARIN CRUMP, et al., *Defendant.*	§	OF TRAVIS COUNTY, TEXAS

PREFILING ORDER

Came to be heard the **Defendant Justices' and Defendant Judge Crump's Separate Motions to Declare Plaintiff a Vexatious Litigant**, and the Court having first declared Mary Louise Serafine to be a vexatious litigant pursuant to the procedures set forth in Tex. Civ. Prac. & Rem. Code Chapter 11, is of the opinion that the following order shall issue:

It is **ORDERED** that Defendants' Motion is, in all things, **GRANTED**.

It is further **ORDERED** that Plaintiff Mary Louise Serafine, is hereby prohibited from filing, *in propria persona*, any new litigation in a court of this State without first obtaining permission from a local administrative judge pursuant to Tex. Civ. Prac. & Rem. Code § 11.102. If Plaintiff does file new litigation in violation of this order, that suit will be subject to dismissal and Plaintiff will be subject to sanctions as proscribed by Tex. Civ. Prac. & Rem. Code § 11.101(b).

Further, pursuant to Tex. Civ. Prac. & Rem. Code § 11.104, the **CLERK of this Court is ORDERED** to provide a copy of this Order to the Office of Court Administration of the Texas Judicial System (OCA) within 30 days so that it may be recorded with the State List of Vexatious Litigants.

The Order can be delivered to OCA at the following contact address:

Office of Court Administration
(Attn: Judicial Information)

P.O. Box 12066
Austin, TX 78711-2066
Facsimile: (512) 463-1865
JudInfo@txcourts.gov

SIGNED on this the 8th day of January, 2021.

JUDGE PRESIDING

Order agreed to in form by:

/s/ Courtney Corbello
Courtney Corbello
Attorney for Defendant Justices

/s/ Anthony J. Nelson
Anthony J. Nelson
Attorney for Judge Crump

CAUSE NO. D-1-GN-19-002601

MARY LOUISE SERAFINE, *Plaintiff,*	§	**IN THE DISTRICT COURT,**
v.	§	**345TH JUDICIAL DISTRICT**
KARIN CRUMP, et al., *Defendant.*	§	**OF TRAVIS COUNTY, TEXAS**

ORDER

On this date, the Court considered **Defendant Justices' and Defendant Judge Crump's Separate Motions to Declare Plaintiff a Vexatious Litigant.** The Court finds Plaintiff Mary Louise Serafine, is a vexatious litigant pursuant to section 11.054 of the Texas Civil Practice and Remedies Code. Plaintiff is hereby ordered to furnish security in the amount of $5,000 by February 8, 2021 to proceed in this case. Failure to timely furnish security may result in dismissal of this suit.

Pursuant to section 11.101 of the Civil Practice and Remedies Code, the Court further orders that Plaintiff be prohibited from filing new litigation in any court in this State without permission from a local administrative judge in each new litigation. The clerk of the court shall forward a copy of this order to the Office of Court Administration pursuant to section 11.104 of the Texas Civil Practice and Remedies Code.

SIGNED on this the 8th day of JANUARY, 2021.

JUDGE PRESIDING

Order agreed to in form by:

/s/ Courtney Corbello
Courtney Corbello
Attorney for Defendant Justices

/s/ Anthony J. Nelson
Anthony J. Nelson
Attorney for Judge Crump

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mary Serafine on behalf of Mary Serafine
Bar No. 24048301
serafine@mlserafine.com
Envelope ID: 55935180
Status as of 8/4/2021 9:08 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Courtney Corbello	24097533	courtney.corbello@oag.texas.gov	8/2/2021 9:41:44 PM	SENT
Anthony J. Nelson	14885800	tony.nelson@traviscountytx.gov	8/2/2021 9:41:44 PM	SENT
John Willis Vinson	20590010	johnvinsonatty@yahoo.com	8/2/2021 9:41:44 PM	SENT
Patrick Pope	24079151	patrick.pope@traviscountytx.gov	8/2/2021 9:41:44 PM	SENT
Mary LouiseSerafine		serafine@mlserafine.com	8/2/2021 9:41:44 PM	SENT